

## **EXHIBIT C**

Application for a Certificate to Become a Telecommunications Carrier

(File this application via e-docket, or if unable to do so, file one original verified application with the Chief Clerk.)

Docket No. \_\_\_\_\_  
ICC Office Use Only

Please provide the appropriate information in the ( ) areas in the heading below.

**McLeodUSA Telecommunications Services, LLC** :  
**Application for a Certificate of Authority to Operate as a Provider of Resold and Facilities-Based Interexchange and Local Telecommunications Services, Statewide, in the State of Illinois** :

**APPLICATION FOR CERTIFICATE TO BECOME A  
TELECOMMUNICATIONS CARRIER**  
(Use additional sheets as necessary.)

**GENERAL**

**1. Applicant's Name(including d/b/a, if any)** **FEIN # 42-1407242**

*McLeodUSA Telecommunications Services, LLC d/b/a PAETEC Business Services*

**Address: Street** *One Martha's Way*

**City** *Hiawatha* **State/Zip** *Iowa, 42233*

**2. Authority Requested: (Mark all that apply)** ☒ 13-403 Facilities Based Interexchange

☐ 13-404 Resale of Local and/or Interexchange

☐ 13-405 Facilities Based Local

**3. Request for waivers/variances: In applications for local exchange service authority under Sections 13-404 or 13-405, waivers of Part 710 and of Section 735.180 of Part 735 are generally requested. In applications for interexchange service authority under Sections 13-403 and 13-404, waivers of Part 710 and Part 735 are generally requested. Please indicate which waivers Applicant is requesting and explain why Applicant is requesting each waiver/variance.**

☒ Part 710 Uniform System of Accounts for Telecommunications Carriers

☒ Part 735 Procedures Governing the Establishment of Credit, Billing, Deposits, Termination of Service and Issuance of Telephone Directories for Local Exchange Telecommunications Carriers in the State of Illinois

☒ Section 735.180 Directories

☒ Other

*McLeodUSA Telecommunications Services, LLC's ("Applicant" or "McLeodUSA") predecessor company, McLeodUSA Telecommunications Services, Inc. ("MTSI") was granted a waiver of Part 710 Uniform System of*

*Accounts (“USOA”) for Telecommunications Carriers because the Company maintains its books and records in accordance with Generally Accepted Accounting Principles (“GAAP”). Continuance of that waiver is warranted to avoid the burden of maintaining a second set of USOA accounting ledgers, which are more appropriate for legacy rate-based carriers, rather than competitive carriers such as Applicant.*

*Applicant also seeks continued waiver of Section 735.180 to the extent that it will contract with the incumbent local exchange carrier for the provision of directory listings. Applicant also seeks a waiver of the Part 735 procedures in order to maintain flexibility in its service offerings as a competitive carrier.*

*Finally, Applicant seeks continued waiver of Section 250.10 so that it may maintain its books and records at its national headquarters in Fairport, New York. All of Applicant’s books and records are maintained at that location.*

**4. For all applicants requesting local exchange authority under Section 13-404 or Section 13-405, please complete the following:**

- (a) the Standard Questions for Applicants Seeking Local Exchange Service Authority found in Appendix A of this document
- (b) the 9-1-1 Questions for Applicants Seeking Local Exchange Service Authority found in Appendix B of this document;
- (c) the Financial Questions for Applicants Seeking Local Exchange Service Authority found in Appendix C of this document; and
- (d) if applicable, the Prepaid Service Questions for Applicants Seeking Local Exchange Service Authority found in Appendix D of this document.

**5. In what area of the state does the Applicant propose to provide service?**

*McLeodUSA seeks to continue its statewide authority.*

**6. Please attach a sheet designating contact persons to work with Staff on the following:**

- a) issues related to processing this application
- b) consumer issues
- c) customer complaint resolution
- d) technical and service quality issues
- e) “tariff” and pricing issues
- f) 9-1-1 issues
- g) security/law enforcement

Please identify each contact person’s (i) name, (ii) title, (iii) mailing address, (iv) telephone number, (v) facsimile number, and (vi) e-mail address.

*See Attachment 1.*

**7. Please check type of organization?**

☐ Individual                      ☐ Corporation  
☐ Partnership                      Date corporation was formed \_\_\_\_\_  
In what state? \_\_\_\_\_  
☒ Other (Specify): *Limited liability company.*

**8. Submit a copy of articles of incorporation and a copy of certificate of authority to transact business in Illinois.**

*See Attachment 2.*

**9. List jurisdictions in which Applicant is offering service(s).**

*Applicant, along with its affiliates, currently provides service in the contiguous 48 states and the District of Columbia.*

**10. Has the Applicant, or any principal in Applicant, been denied a Certificate of Service or had its certification revoked or suspended in any jurisdiction in this or another name?**

\_\_\_\_\_ YES (Please provide details)      X   NO

**11. Have there been any complaints or judgements levied against the Applicant in any other jurisdiction?**

  X   YES    \_\_\_\_\_ NO

If YES, describe fully. *Applicant and its affiliates provide competitive telecommunications services in the 48 contiguous states and the District of Columbia. As such, it has, over the years, received complaints from customers that are typical for carriers that provide a wide array of services to a broad and diverse customer base. Such complaints include issues such as service outages, customer service issues, billing, technical issues, and slamming. Applicant has a dedicated network operations and customer service center that are tasked with responding to and resolving all customer complaints. Applicant has generally been successful in resolving complaints to the customers' satisfaction, and is committed to delivering excellent telecommunications and customer service to its subscribers. There are no outstanding judgments against Applicant or any subsidiary or affiliate.*

**12. Has Applicant provided service under any other name?**

  X   YES    \_\_\_\_\_ NO

If YES, please list.: *Applicant has previously provided service under the name McLeod Telemanagement, Inc. It provides service under PAETEC Business Services.*

**13. Will the Applicant keep its books and records in Illinois?**    \_\_\_\_\_ YES      X   NO

If NO, permission pursuant to 83 Ill. Adm Code Part 250 needs to be requested.

*Applicant requests that it be continued to be granted permission pursuant to 83 Ill. Adm. Code Part 250 to maintain its books and records outside the state of Illinois. Specifically, Applicant seeks continued waiver of Section 250.10 so that it may maintain its books and records at its national headquarters in Fairport, New York. All of Applicant's books and records are maintained at that location.*

**MANAGERIAL**

**14. Please attach evidence of the applicant's managerial and technical resources and ability to provide service. This may be in either narrative form, resumes of key personnel, or a combination of these forms.**

*See Attachment 3.*

**15. List officers of Applicant.** *See Attachment 4.*

**16. Does any officer of Applicant have an ownership or other interest in any other entity which has provided or is currently providing telecommunications services?**    \_\_\_\_\_ YES      X   NO

If YES, list entity. \_\_\_\_\_

**17. How will Applicant bill for its service(s)? (At a minimum, describe how often the Applicant will bill for service and details of the billing statement.)**

*Applicant bills its customers directly on a monthly basis. All billing statements lists the Applicant's name, address, and toll free number for billing or service questions. Applicant's bills detail monthly charges, call detail, and required line items, such as applicable taxes, fees, and universal service charges.*

**18. How does Applicant propose to handle service, billing, and repair complaints? (At a minimum, describe Applicant's internal process for complaint resolution, the complaint escalation process, the timeframe and process by which the customer is notified by Applicant that they may seek assistance from the Commission?)**

*Customers that have service, billing, and repair complaints can contact Applicant either through the Internet, or by calling directly toll-free. Applicant has established several toll-free numbers that customers can use to contact the company. Information regarding the various toll-free numbers and e-mail service options are available on the corporate website at <http://www.paetec.com/customer-care/contact-customer-care>. Customers that call the customer care center speak directly to representatives, and not to automated prompts or recordings. The company's highly trained professionals provide exceptional customer support and deliver one of the highest levels of first-call resolution in the industry. Among other things, Applicant's knowledgeable account specialists: strive to answer calls within 20 seconds; aim to resolve issues in a single call; answer billing inquiries and perform invoice reviews; process service order requests; provide up-to-date product information; and perform online customer support tutorials. Customers can request that complaints be escalated at any time, and the company's goal is to resolve any complaints during the call, and if that is not possible, within 24 hours of the complaint. Customers will be notified that they may seek assistance from the Commission if the complaint is not resolved to the customers' satisfaction. There are no outstanding judgments against Applicant or any subsidiary or affiliate.*

**19. Will personnel be available at Applicant's business office during regular working hours to respond to inquiries about service or billing? ☒ YES ☐ NO**

**20. What telephone number(s) would a customer use to contact your company?**

*Customers may contact the company at the following numbers:*

*Repair*

*Business: 877.340.2555*

*Residential: 800.500.3453*

*Data Center Services Technical Assistance*

*Phone: 800.967.2233*

*Customer Care*

*Phone: 877.340.2600*

*Fraud & Subpoena Compliance / Annoyance Call Center*

*Phone: 877.999.7705*

*Former McLeodUSA Business Services:  
800.593.1177*

*McLeodUSA Residential Services: 800.500.3453*

*Corporate Information*

*Phone: 877.472.3832*

**21. Will Applicant abide by all Federal and State slamming and cramming laws pursuant to Section 13-902 of the Public Utilities Act and Section 258 of the 1996 Telecommunications Act?**

☒ YES ☐ NO

**22. Please describe applicant's procedures to prevent slamming and cramming of customers?**

*Applicant obtains written letters of agency ("LOA") or employs third party verification ("TPV") recordings from each customer prior to changing the customer's preferred carrier. All LOA and TPV scripts utilized by customer service representatives comply with FCC regulations for carrier change requests.*

- 23. If granted authority to operate as a local exchange carrier, will the applicant abide by the following 83 Illinois Administrative Code Parts: 705, 710, 720, 725, 730, 732, 735, 755, 756, 757, 770, and 772?**

  X   YES        NO (If no, please provide an explanation.) *Applicant will abide by the above-referenced IAC Code sections to the extent that waivers have not been granted.*

- 24. Is Applicant aware that it must file tariffs prior to providing service in Illinois?**

  X   YES        NO

#### **FINANCIAL**

- 25. Please attach evidence of Applicant's financial fitness through the submission of its most current income statement and balance sheet, or other appropriate documentation of applicant's financial resources and ability to provide service.**

*See Attachment 5 for a copy of PAETEC Holding Corp.'s (Applicant's ultimate parent) most recent SEC Form 10-Q filing, demonstrating Applicant's financial fitness to provide service in Illinois..*

#### **TECHNICAL**

- 26. Does Applicant utilize its own equipment and/or facilities?**   X   YES        NO

If YES, please list the facilities Applicant intends to utilize. Also include evidence that Applicant possesses the necessary technical resources to deploy and maintain said facilities:

*Applicant provides service to customers using its own switches and fiber. Where Applicant does not have facilities to the end user, Applicant leases facilities from the incumbent or other underlying carrier with appropriate network capabilities. As demonstrated by the biographies of Applicant's key personnel, the company has the technical resources to deploy and maintain the facilities it currently uses to provide service to customers.*

If NO, which facility provider(s)'s services does the Applicant intend to use?

- 27. Please describe the nature of service to be provided (e.g., operator services, internet, debit cards, long distance service, data services, local service, prepaid local service).**

*Applicant proposes to continue providing competitive facilities-based and resold local exchange and interexchange service to its customers.*

- 28. Will technical personnel be available at all times to assist customers with service problems?**

  X   YES        NO

- 29. If Applicant intends to provide payphone service, will the equipment utilized comply with FCC requirements and Finding (9) of the Commission Order entered in Docket No. 84-0442 on June 11, 1986, including, but not limited to: (a) touch dialing; (b) access to 9-1-1 and "0" operator dialing without use of a coin; (c) rules governing use of payphones by disabled persons; (d) ability to complete local and long-distance calls; (e) unlimited duration for local calls; and (f) a message explaining the telephone's general operations, dialing instructions for emergency assistance, payphone owner's name, method of reporting service problems and method of receiving credit for faulty calls?**

*Not applicable.*

       YES        NO



(Signature of Applicant)

## VERIFICATION

This application shall be verified under oath.

## OATH

State of New York


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County of Monroe

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William A. Haas makes oath and says that he is Vice President of Public Policy and Regulatory of McLeodUSA Telecommunications Services, LLC, that he has examined the foregoing application and that to the best of his knowledge, information, and belief, all statements of fact contained in the said application are true, and the said application is a correct statement of the business and affairs of the above-named applicant in respect to each and every matter set forth therein.

  
(Signature of affiant)

Subscribed and sworn to before me, a Notary Public/ Leslie Hartford, Paralegal  
(Title of person authorized to administer oaths)

in the State and County above named, this 10<sup>th</sup> day of June, 2010.

LESLIE E. HARTFORD  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01HA6210284  
Qualified in Monroe County  
My Commission Expires August 17, 2013

  
(Signature of person authorized to administer oath)

## Standard Questions for Applicants Seeking Local Exchange Service Authority

- 1. Is your company seeking any waivers or variances of certain Commission rules and regulations in this proceeding that pertain to local exchange service? Please provide evidence as to why your company is seeking any waiver or variance.**

*Applicant seeks a continued waiver of Part 710 Uniform System of Accounts (“USOA”) for Telecommunications Carriers because the company maintains its books and records in accordance with Generally Accepted Accounting Principles (“GAAP”). Continuance of that waiver is warranted to avoid the burden of maintaining a second set of USOA accounting ledgers, which are more appropriate for legacy rate-based carriers, rather than competitive carriers such as Applicant.*

*Applicant also seeks continued waiver of Section 735.180 to the extent that it will contract with the incumbent local exchange carrier for the provision of directory listings. Applicant also seeks a waiver of the Part 735 procedures in order to maintain flexibility in its service offerings as a competitive carrier.*

*Finally, Applicant seeks continued waiver of Section 250.10 so that it may maintain its books and records at its national headquarters in Fairport, New York. All of Applicant’s books and records are maintained at that location.*

- 2. Will your company comply with 83 Illinois Administrative Code Part 772, Pay-Per-Call Services, including Part 772.55(a)(1), Billing and Part 772.100(d) Notices?**

*Yes.*

- 3. Will your company comply with 83 Illinois Administrative Code Part 705, Preservation of Records of Telephone Utilities?**

*Yes.*

- 4. Will your company abide by 83 Illinois Administrative Code Part 735, "Procedures Governing the Establishment of Credit, Billing, Deposits, Termination of Service and Issuance of Telephone Directories for Telephone Utilities in the State of Illinois"?**

*Yes.*

- 5. Will your company abide by 83 Illinois Administrative Code Part 732, “Customer Credits”?**

*Yes.*

- 6. Who will provide customer repair service for your company?**

*Applicant provides customer repair service.*

- 7. How many people does the company employ?**

*Applicant is a wholly owned subsidiary of PAETEC Holding Corp. The total number of employees of the combined company is approximately 3,700.*

- 8. Will your company meet the requirements as they pertain to the Telephone Assistance Programs imposed by Sections 13.301 and 13.301.1 of the Illinois Public Utilities Act and 83 Illinois Administrative Code Part 757?**

*Yes.*



**9. Will your company solicit, collect, and remit the voluntary contributions from its telephone subscribers to support the Telephone Assistance Programs?**

*Yes.*

**10. Does your company plan on filing to become an Eligible Telecommunications Carrier?**

*No.*

**11. Does the company realize that it will not be able to receive any of the federal reimbursements for the Lifeline and Link Up Programs if it is not an eligible carrier?**

*Yes.*

**12. Will your company offer all of the waivers associated with the Universal Telephone Service Assistance Programs (UTSAP)?**

*Yes.*

**13. Will your company abide by the regulations as prescribed in 83 Illinois Administrative Code Part 755, "Telecommunications Access for Persons with Disabilities," 83 Illinois Administrative Code Part 756 "Telecommunications Relay Service," and Sections 13-703 of the Illinois Public Utilities Act?**

*Yes.*

**14. Will the company's billing system be able to distinguish between resale and facilities based service for the collection of the ITAC line charge?**

*Yes.*

**15. Has your company signed and return the Universal Telephone Assistance Corporation ("UTAC") and the Illinois Telecommunications Access Corporation ("ITAC") to Commission staff?**

*Yes, McLeodUSA Telecommunications Services, Inc. has filed with both UTAC and ITAC. Applicant will resubmit those filings with UTAC and ITAC to reflect change in corporate form to a limited liability company.*

**16. How does your company plan to solicit customers once it begins to provide local service?**

*Applicant currently provides local service in Illinois. It plans to continue its current marketing efforts, which include solicitations through its agents and direct sales force, mailings, and advertisements in various print and online media. All sales and customer service orders comply with FCC and telemarketing requirements.*

**17. Has your company provided service under any other name?**

*Yes. Applicant has previously provided service under the name McLeod Telemanagement, Inc. It provides service under PAETEC Business Services.*

**18. Have any complaints or judgements been levied against the company? (Instate, out-of-state, or FCC).**

*Applicant and its affiliates provide competitive telecommunications services in the 48 contiguous states and the District of Columbia. As such, it has, over the years, received complaints from customers that are typical for carriers that provide a wide array of services to a broad and diverse customer base. Such complaints include issues such as service outages, customer service issues, billing, technical issues, and slamming. Applicant has a dedicated network operations and customer service center that are tasked with responding to and resolving all customer complaints. Applicant has generally been successful in resolving complaints to the customers' satisfaction, and is committed to delivering excellent telecommunications and customer service to its subscribers.*

**9-1-1 Questions for Applicants Seeking Local Exchange Service Authority**

- 1. Will your company ensure that 911 traffic is handled in accordance with the 83 Illinois Administrative Code Part 725 and the Emergency Telephone System Act?**

*Yes.*

- 2. Will your company contact and establish a working relationship with the 911 systems when you begin to provide local telephone service?**

*Yes.*

- 3. Will your company coordinate with the incumbent LEC(s) and local 911 systems to provide transparent service for your local exchange customers?**

*Yes.*

- 4. Who will be responsible for building and maintaining the 911 database for your local exchange customers?**

*Applicant is responsible for daily customer service record changes relevant to the 911 database.*

- 5. How often will your company update the 911 database with customer information?**

*Applicant is responsible for daily customer service record changes relevant to the 911 database.*

- 6. Will your company's billing system have the ability to distinguish between facilities based and resale for the collection of the 911 surcharge?**

*Yes.*

- 7. Does your company have procedures for the transitioning of the 911 surcharge collection and disbursement to the local 911 system?**

*Yes. Applicant receives 911 billing statements from the local 911 systems, and then remits payments collected from customers to the applicable local 911 system.*

- 8. Will your company's proposal require any network changes to any of the 911 systems?**

*No.*

- 9. Will your company be able to meet the requirements specified under Part 725.500(o) and 725.620(b) for the installation of call boxes?**

*To the extent that such requirements are applicable to the service provided by Applicant, the company will be able to meet the requirements specified under Part 725.500(o) and 725.620(b) for the installation of call boxes?*

- 10. Does your company plan to file for a waiver of Part 725.500(o) and 725.620(b) in the future?**

*Applicant does not have any plans at this time to file for a waiver of those requirements.*

### Financial Questions for Applicants Seeking Local Exchange Service Authority

1. **(Answer if requesting waiver of Part 710) What circumstances warrant a departure from the prescribed Uniform System of Accounts (“USOA”)?**

*Applicant seeks a continued waiver of Part 710 Uniform System of Accounts (“USOA”) for Telecommunications Carriers because the company maintains its books and records in accordance with Generally Accepted Accounting Principles (“GAAP”). Continuance of that waiver is warranted to avoid the burden of maintaining a second set of USOA accounting ledgers, which are more appropriate for legacy rate-based carriers, rather than competitive carriers such as Applicant.*

2. **Will records be maintained in accordance with Generally Accepted Accounting Principles (“GAAP”)?**

*Yes.*

3. **Will applicants accounting system provide an equivalent portrayal of operating results and financial condition as the USOA?**

*Yes.*

4. **Will applicants accounting procedures maintain or improve uniformity in substantive results as among similar telecommunications companies?**

*Yes.*

5. **Will applicant maintain its records in sufficient detail to facilitate the calculation of all applicable taxes?**

*Yes.*

6. **Does the accounting system currently in use by applicant provide sufficiently detailed data for the preparation of Illinois Gross Receipts Tax returns? What specific accounts or sub-accounts provide this data?**

*Yes. Applicant’s billing software currently separates out tax data in order to prepare any necessary state tax returns. Separate accounts have been established for this information so that the company’s accounting personnel can prepare and remit the appropriate taxes for each jurisdiction, including Illinois. The specific account/sub-account information has been previously provided to the Commission, and Applicant respectfully requests that the Commission take administrative notice of that information.*

7. **If a waiver of Part 710 is granted, will applicant provide annual audited statements or all periods subsequent to granting of the waiver?**

*Yes applicant will provide annual audited statements, or such periods as required or requested..*

8. **Does applicant agree that the requested waiver of Part 710 will not excuse it from compliance with future Commission rules or amendments to Part 710 otherwise applicable to the Company?**

*Yes.*

9. **Please attached a copy of applicant’s chart of accounts.**

*This information has been provided to the Commission in connection with Applicant’s prior applications for certificates of authority. Applicant respectfully requests that the Commission take administrative notice of that information.*

**Prepaid Service Questions for Applicants Seeking Local Exchange Service Authority**

Not applicable.

1. Will customers have the ability to sign up with any long distance company they choose?
2. Will customers have the ability to use dial around long distance companies?
3. Does the applicant have interexchange authority in Illinois? If yes, please provide the docket number.
4. Will customers have access to the Illinois Relay Service?
5. Will customers be able to make 1-800 calls for free?
6. Will the Company offer operator services?
7. Please describe how applicant plans to collect the monthly fee to be paid in advance.
8. Will customers' monthly bills show a breakdown of services, features, surcharges, taxes, etc.?
9. Will customers pay an installation fee? If yes, will payment arrangements be offered for the installation fee?
10. Will telephone service be in the Company's name or the customer's name. If in the Company's name how will information appear in data bases, such as 9-1-1, directory assistance, etc.?
11. Will applicant offer prepaid service as a monthly service or as a usage service?
12. Will applicant provide a warning when the remaining value of service is about to cease?
13. Is the customer given more than one notice of the remaining value of service?
14. How much advance notice is given to the customer of the remaining value of service?
15. If the customer is in the middle of a call will they be disconnected when the remaining value of service has expired?
16. Has the customer been made aware of potentially being disconnected during a call when the remaining value of service expires?
17. When does the timing of a call start?
18. If the person called does not answer, is any time deducted from the customer's account?
19. Will there be any other instances in which the Company would disconnect a customer, other than running out of prepaid time?
20. When a customer runs out of time is their phone immediately disconnected or on suspension? (Will they still be able to receive calls?)
21. Are applicant's services available to TTY callers?
22. How will the applicant handle a complaint from a customer who disputes the amount of time used or remaining?
23. The Public Utilities Act requires a local calling area that has no time or duration charges. How will the Company define each customer's untimed local calling area?

## **ATTACHMENT 1**

Company Contacts

**McLeodUSA Telecommunications Services, LLC**

Company Contact Information

a) Issues Related To Processing This Application

Tony S. Lee, Esq.  
Venable LLP  
575 7th Street, N.W.  
Washington, DC 20004  
Tel: (202) 344-8065  
Fax: (202) 344-8300  
Email: tslee@venable.com

b) Consumer Issues

Rachel Greene  
Senior Manager, Customer Care  
PAETEC.  
One Martha's Way  
Hiawatha, IA 52233  
Tel: (319) 790-1169  
Fax: (888) 880-7676  
Email: Rachel.greene@PAETEC.com

c) Customer Complaint Resolution

Christine Neff  
Manager, Executive Escalations  
PAETEC  
One Martha's Way  
Hiawatha, IA 52233  
Tel: (319) 790-6702  
Fax: (585) 770-2498  
Email: Christine.neff@paetec.com

d) Technical And Service Quality Issues

Judith Messenger  
Senior Manager, Public Policy & Regulatory  
PAETEC  
600 Willowbrook Office Park  
Fairport, NY 14450  
Tel: (585) 340-2822  
Fax: (585) 770-2498  
Email: judy.messenger@paetec.com

e) “Tariff” And Pricing Issues

Julie Dishman  
Manager, Regulatory & Tariffs  
PAETEC  
8665 New Trails Drive  
The Woodlands, Texas 77381  
Tel: (281) 465-1431  
Fax: (281) 465-1957  
Email: Julie.dishman@paetec.com

f) 9-1-1 Issues

Judith Messenger  
Senior Manager, Public Policy & Regulatory  
PAETEC  
600 Willowbrook Office Park  
Fairport, NY 14450  
Tel: (585) 340-2822  
Fax: (585) 770-2498  
Email: judy.messenger@paetec.com

g) Security/Law Enforcement

Mary Hochheimer  
Senior Manager, Fraud & Subpoena Compliance  
PAETEC  
400 Willowbrook Office Park  
Fairport, NY 14450  
Tel: (877) 999-7705  
Fax: (585) 368-2686  
Email: mary.hochheimer@paetec.com

**ATTACHMENT 2**

Articles of Conversion  
and  
Certificate of Authority to Transact Business



Feb. 26. 2010 9:51AM

Shuttleworth & Ingersoll P. L. C.

No. 2840 P. 4

02/25/2010 THU 11:23 FAX 704 319 3115

US LEC LEGAL

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522363 COND \$5.00 DJC 2/26/10

168002

ARTICLES OF CONVERSION  
OF  
MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.

TO THE SECRETARY OF STATE OF THE STATE OF IOWA:

Pursuant to Section 1113 of the Iowa Business Corporation Act and Section 1008 of the Revised Uniform Limited Liability Company Act, the undersigned Corporation adopts the following Articles of Conversion:

1. McLeodUSA Telecommunications Services, Inc., an Iowa corporation organized on July 26, 1995 has been converted into McLeodUSA Telecommunications Services, L.L.C., an Iowa Limited Liability Company. The Plan of Conversion (the "Plan of Conversion"), pursuant to which McLeodUSA Telecommunications Services, Inc., is to be converted into McLeod Telecommunications Services, L.L.C. effective at 12:03 a.m. on March 1, 2010, is attached hereto as Exhibit A.
2. The Plan of Conversion was duly approved by the shareholders and board of directors of McLeodUSA Telecommunications Services, Inc., an Iowa corporation in the manner required by Iowa Code Chapter 490 and the Articles of Incorporation of the corporation.
3. The Plan of Conversion was duly approved by the sole member of McLeodUSA Telecommunications Services, L.L.C., an Iowa limited liability company in the manner required by Iowa Code Chapter 489.
4. The Certificate of Organization of McLeodUSA Telecommunications Services, L.L.C. is attached hereto as Exhibit B.

The effective date and time of these Articles of Conversion is March 1, 2010 at 12:03 a.m.

MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.

By: Keith Thorp  
Keith Thorp, Vice President, Tax

By: S. Shane Turley  
S. Shane Turley, VP, Corporate Compliance Officer, Assist. Secretary

FILED

MAY 18 2010

JESSE WHITE  
SECRETARY OF STATE

13.45  
+ 25.00  
MA

(C)



## OFFICE OF THE SECRETARY OF STATE

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JESSE WHITE • Secretary of State

MAY 19, 2010

0296148-2

C T CORPORATION SYSTEM  
208 SO LASALLE ST, SUITE 814  
CHICAGO, IL 60604-1101

RE MCLEODUSA TELECOMMUNICATIONS SERVICES, L.L.C.

DEAR SIR OR MADAM:

IT HAS BEEN OUR PLEASURE TO APPROVE YOUR REQUEST TO TRANSACT BUSINESS IN THE STATE OF ILLINOIS. ENCLOSED PLEASE FIND THE APPROVED APPLICATION FOR ADMISSION.

PLEASE NOTE! THE LIMITED LIABILITY COMPANY MUST FILE AN ANNUAL REPORT PRIOR TO THE FIRST DAY OF THIS MONTH OF QUALIFICATION NEXT YEAR. FAILURE TO TIMELY FILE WILL RESULT IN A \$300 PENALTY AND/OR REVOCATION. A PRE-PRINTED ANNUAL REPORT WILL BE MAILED TO THE REGISTERED AGENT AT THE ADDRESS ON OUR RECORDS APPROXIMATELY 45 DAYS BEFORE THE DUE DATE.

MANY OF OUR SERVICES ARE AVAILABLE AT OUR CONTINUOUSLY UPDATED WEBSITE. VISIT [WWW.CYBERDRIVEILLINOIS.COM](http://WWW.CYBERDRIVEILLINOIS.COM) TO VIEW THE STATUS OF THIS COMPANY, PURCHASE A CERTIFICATE OF GOOD STANDING, OR EVEN FILE THE ANNUAL REPORT REFERRED TO IN THE EARLIER PARAGRAPH.

SINCERELY YOURS,

JESSE WHITE  
SECRETARY OF STATE  
DEPARTMENT OF BUSINESS SERVICES  
LIMITED LIABILITY DIVISION  
(217) 524-8008

JW:LLC

Form <b>LLC-45.5</b> October 2009 <b>Secretary of State Jesse White</b> Department of Business Services Limited Liability Division 501 S. Second St., Rm. 351 Springfield, IL 62756 217-524-8008 www.cyberdriveillinois.com Payment must be made by certified check, cashier's check, Illinois attorney's check, C.P.A.'s check or money order payable to Secretary of State.	<b>Illinois Limited Liability Company Act</b> <b>Application for Admission to Transact Business</b> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;"> <b>SUBMIT IN DUPLICATE</b>          Must be typewritten.       </div> This space for use by Secretary of State. <b>Filing Fee: \$500</b> <b>Penalty: \$</b> <b>Approved:</b> <i>pl</i>	FILE # <b>0296148-2</b> This space for use by Secretary of State. <div style="text-align: center; font-size: 2em; font-weight: bold; margin: 10px 0;">FILED</div> <div style="text-align: center;">MAY 19 2010</div> <div style="text-align: center;">JESSE WHITE SECRETARY OF STATE</div>
--	---	--

1. Limited Liability Company Name: McLeodUSA Telecommunications Services, L.L.C.
  
2. Assumed Name: \_\_\_\_\_  
 By electing this Assumed Name, the Limited Liability Company hereby agrees not to use its Company Name in the transaction of business in Illinois. Form LLC-120 is attached.
  
3. Jurisdiction of Organization: Iowa
  
4. Date of Organization: 07/26/1993
  
5. Period of Duration: Perpetual
  
6. Address, including County, of the Office required to be maintained in the jurisdiction of its organization or, if not required, of the Principal Place of Business: (P.O. Box alone or c/o is unacceptable.)  
600 Willowbrook Office Park  

Number	Street	Suite #
Fairport, NY	14450	Monroe
City/State	ZIP Code	County
  
7. Registered Agent: C T Corporation System  

First Name	Middle Name	Last Name
------------	-------------	-----------

  
 Registered Office: 208 South LaSalle Street, Suite 814  
 (P.O. Box alone or c/o is unacceptable.)  

Number	Street	Suite #
Chicago	Cook	Illinois 60604
City	County	ZIP Code
  
8. If applicable, Date on which Company first conducted business in Illinois: \_\_\_\_\_

(continued on back)

9. Purpose(s) for which the Company is Organized and Proposes to Conduct Business in Illinois: \_\_\_\_\_  
 Telecommunications services In addition, to engage in any and all lawful purposes for which limited liability companies may be  
~~organized under the Iowa Limited Liability Company Act and as permitted under the Illinois Limited Liability Company Act.~~

10. The Limited Liability Company: (check one)

☐ is managed by the **manager(s)** (List names and business addresses.)

☒ has management vested in the **members(s)** (List names and business addresses.)

Paetec Communications, Inc. , 600 Willowbrook Office Park, Fairport, NY 14450

11. The Illinois Secretary of State is hereby appointed the agent of the Limited Liability Company for service of process under  
 circumstances set forth in subsection (b) of Section 1-50 of the Illinois Limited Liability Company Act.

12. **This application is accompanied by a Certificate of Good Standing or Existence, duly authenticated within the last 60  
 days, by the officer of the state or county wherein the LLC is formed.**

13. The undersigned affirms, under penalties of perjury, having authority to sign hereto, that this application for admission to transact  
 business is to the best of my knowledge and belief, true, correct and complete.

Dated: April 21<sup>st</sup>, 2010  
 Month & Day Year

[Signature]  
 Signature (Must comply with 5-45 of ILLCA)

S. Shane Turley, Vice President of Paetec Communications, Inc., its Member  
 Name and Title (type or print)

If applicant is signing for a Company or other Entity, state Name of Company  
 and indicate whether it is a member or manager of the LLC.

## **ATTACHMENT 3**

Biographies of Key Personnel

## **Arunas A. Chesonis**

### **Chairman and CEO**

Arunas A. Chesonis serves as Chairman of the Board and Chief Executive Officer of PAETEC Holding Corp., and is responsible for the vision, leadership, and direction of the company. Since being founded by Mr. Chesonis in 1998, PAETEC has achieved remarkable growth with 2008 annual revenues of \$1.6 billion and serving nearly 47,000 businesses in all 50 states.

He has developed and fostered a unique, employee-focused culture PAETEC based on four core values: a Caring Culture, Open Communication, Unmatched Service and Personalized Solutions, and has co-written the business book, *It Isn't Just Business, It's Personal*. As a result, in 2009 the company was named one of the top ten best large companies to work for in New York State by NYS-SHRM and received the national American Business Ethics Award sponsored by the Society for Financial Service Professionals.

Mr. Chesonis began his career at Rochester Telephone Corporation and went on to serve as President of ACC Corp. and led the company until it was purchased by TCG/ATT in 1998. He's received the Ernst & Young Entrepreneur of the Year Award, the Herbert W. Vanden Brul Entrepreneurial Award by the College of Business at Rochester Institute of Technology and was elected to the Rochester Business Hall of Fame.

He holds a B.S. in Civil Engineering from Massachusetts Institute of Technology, an MBA from the William E. Simon Graduate School of Business at the University of Rochester, and an Honorary Doctorate of Laws from the University of Rochester. He is co-director of the MIT Sustainable Energy Revolution Program (SERP), and serves as trustee at the Harley School, Rochester Institute of Technology and the University of Rochester.

He also serves as a husband and father to wife Pam, and children Adam, Erik, Tessa and Emma Chesonis, for which the company was named by founding employees.

## **Keith M. Wilson**

### **Chief Financial Office, EVP and Treasurer**

Keith M. Wilson serves PAETEC as Chief Financial Officer and Treasurer, and is responsible for maintaining and reporting the financial health of the company and overseeing corporate assets. In this role, Mr. Wilson is responsible for such finance-related departments as Treasury, Accounting, Corporate Finance, Mergers & Acquisitions, and Investor Relations and also serves as Executive Vice President in charge of PAETEC's Network Operations Centers and Service Delivery. Additionally, Mr. Wilson serves as a Director for PAETEC's Board.

Prior to joining PAETEC in January 2001, Mr. Wilson most recently served as Vice President and head of the Telecommunications Finance Group at Union Bank of California, where he focused on sourcing and providing capital for telecommunications services companies in the wireline, wireless, and data-services markets. Mr. Wilson also has held positions with First Dominion Capital, NationsBank, Bank of Boston, and Fleet Bank. Mr. Wilson received a Bachelor of Arts degree from Dickinson College in Carlisle, PA, where he was a Nisbet Scholar, and a master's degree from The University of Michigan. Mr. Wilson serves on the Board of Directors, Executive Committee, and as Vice Chairman for the Rochester Philharmonic Orchestra. He is also former Chairman of the Dickinson Fund Advisory Committee, and former Board Member of the McAndrews Fund for Athletics, both of Dickinson College.

## **Edward J. Butler Jr.**

### **Chief Operating Officer and EVP**

Edward J. Butler, Jr. serves PAETEC as Chief Operating Officer. In this capacity, he is responsible for revenue growth, retention and technology development and delivery. His functional departmental oversight includes PAETEC's Enterprise, Channel, and Wholesale Market Sales, Account Development, and Marketing divisions as well as the company's Network and Engineering operations. Mr. Butler joined PAETEC as a member of the founding officer team in 1998, and possesses more than 25 years of experience in the telecommunications industry.

Prior to joining PAETEC, he served ACC Communications for more than a decade in a number of executive and managerial positions. Mr. Butler serves on the COMPTel Alliance CEO Council and the Board of Directors for Hospice Buffalo. He is also Advisory Board member and past Board Chairman for Compeer West, a not-for-profit United Way mentoring agency in Western New York, and founded and serves as Director of the Edward Butler Sr. Family Foundation.

## **Algimantas K. Chesonis**

### **Senior Vice President of Finance, Chief Accounting Officer**

Algimantas K. Chesonis serves PAETEC as Senior Vice President of Finance, Chief Accounting Officer, and Controller, overseeing all aspects of accounting and financial reporting. Prior to joining PAETEC, Mr. Chesonis was Director of Public Reporting for U.S. Foodservice, Inc. and Audit Manager for Price Waterhouse, LLP. Mr. Chesonis is also a Vice Chairman of the Board of Directors for Golisano Children's Hospital at Strong, University of Rochester Medical Center, and a recipient of the 2004 Rochester Business Journal's Forty Under 40 Award. Mr. Chesonis holds a Bachelors degree in Accounting from the University of Delaware and is a Certified Public Accountant.

## **Mario DeRiggi**

### **Executive Vice President; President, National Sales and Service**

Mario DeRiggi serves as EVP and President, National Sales and Service, and is responsible for managing direct sales, agent sales, account development, network design, service engineering, as well as P&L responsibility nationwide. Mr. DeRiggi previously served as Executive Vice President responsible for overseeing PAETEC's East Region.

Prior to beginning his career at PAETEC as Vice President of Sales for NY Metro, Mr. DeRiggi had over ten years' experience in the telecommunications industry, holding positions at Allnet Communications, AT&T, Winstar Communications, and Cablevision Lighthouse.

Mr. DeRiggi received his B.A. from SUNY Oswego.

## **Robert D. Moore, Jr.**

### **Executive Vice President and Chief Information Officer**

Robert D. Moore, Jr., serves PAETEC as Executive Vice President and Chief Information Officer, overseeing operating support systems, system operations, applications development and deployment, engineering and service delivery. Mr. Moore has 15 years of experience in the telecom industry and has served PAETEC in a number of Information Technology management positions since its inception.

Mr. Moore serves on the Golisano College of Computing and Information Sciences Dean's Council at the Rochester Institute of Technology and the Regional Community Asthma Network of the Finger Lakes. Mr. Moore is on the Board of Directors of the American Lung Association of New York and is also active in the annual Blow the Whistle on Asthma Walk. Additionally, he sponsors an Exploring post in Information Technology for the Otetiana Council of the Boy Scouts of America and was awarded the Rochester Business Journal's Forty under 40 Award.

## **Mary K. O'Connell**

### **Senior Vice President, General Counsel, Corporate Compliance Officer and Secretary**

Mary K. O'Connell serves as Senior Vice President, General Counsel, Corporate Compliance Officer and Secretary. In this role, she has oversight of all Securities and Exchange Commission, legal, and regulatory matters for the company. She also oversees government relations.

Prior to joining PAETEC, O'Connell spent eight years in private practice at Morrison & Foerster, LLP as well as Levine, Blaszak, Block & Boothby, LLP in Washington, D.C.; and at Phillips, Lytle LLP in Rochester, N.Y.

A graduate of Cornell University and the UCLA School of Law, Ms. O'Connell's previous experience includes increasingly responsible work in general business law, corporate legal matters, and regulatory affairs. In addition, she was an Assistant Public Defender in the Monroe County (N.Y.) Public Defender's Office during the mid-1990s.

In the community, Ms. O'Connell previously has served on the Board of Trustees for the Seneca Park Zoo Society, and as a Director of the Baden Street Settlement, the John Budney Memorial Fund, and the CDS Foundation.

## **Laurie Zaucha**

### **Senior Vice President of Human Resources**

Laurie Zaucha serves as Senior Vice President of Human Resources. In this role she is responsible for overseeing the company's benefits, compensation, staffing and retention, performance management, employee relations, and HRIS functions.

Prior to joining PAETEC, Ms. Zaucha spent more than four years at Bausch & Lomb, most recently as Vice President, Global Compensation and Benefits. Ms. Zaucha has also spent time with Footstar, Inc., and Starbucks Coffee Co. She has a BS degree in Computer Information Technology from Bentley College, and an MS degree in Management from Purdue University. Ms. Zaucha serves on the Board of Directors for the YWCA of Rochester and Monroe County, and is on the Human Resources Advisory Council for Nazareth College.



## **ATTACHMENT 4**

List of Officers and Directors

## **OFFICERS AND DIRECTORS OF PAETEC HOLDING CORP.<sup>1</sup>**

### **DIRECTORS:**

Arunas A. Chesonis  
Richard T. Aab  
Shelley Diamond  
H. Russell Frisby, Jr.  
Tansukh V. Ganatraa  
Michael C. MacDonald  
William R. McDermott  
Alex Stadler  
Keith M. Wilson  
Mark Zupan

### **OFFICERS:**

Arunas A. Chesonis	Chairman, President and Chief Executive Officer
Edward J. Butler, Jr.	Executive Vice President and Chief Operating Officer
Keith M. Wilson	Executive Vice President and Chief Financial Officer, Treasurer
Algimantas K. Chesonis	Senior Vice President, Chief Accounting Officer and Controller
Mary K. O'Connell	Senior Vice President, General Counsel and Secretary
Laurie Zaucha	Senior Vice President, Human Resources
Robert D. Moore, Jr.	Senior Vice President and Chief Information Officer
William A. Haas	Vice President, Regulatory and Public Policy, Assistant Secretary
John B. Messenger	Assistant Secretary
S. Shane Turley	Assistant Secretary
Peter Connoy	Assistant Treasurer

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<sup>1</sup> PAETEC Holding Corp. is Applicant's ultimate parent.

**ATTACHMENT 5**

SEC Form 10-Q

Morningstar<sup>®</sup> Document Research<sup>SM</sup>

## **FORM 10-Q**

**PAETEC Holding Corp. - PAET**

**Filed: May 07, 2010 (period: March 31, 2010)**

Quarterly report which provides a continuing view of a company's financial position

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-Q**

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(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2010

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 000-52486

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**PAETEC HOLDING CORP.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**20-5339741**  
(I.R.S. Employer  
Identification No.)

**One PAETEC Plaza**  
**600 Willowbrook Office Park**  
**Fairport, New York**  
(Address of principal executive offices)

**14450**  
(Zip Code)

**Registrant's telephone number, including area code: (585) 340-2500**

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act:

Large accelerated filer ☐  
Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Accelerated filer ☒  
Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The number of shares of the registrant's common stock outstanding on May 3, 2010 was 146,217,008.

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**PART I**  
**FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**PAETEC Holding Corp. and Subsidiaries**  
**Condensed Consolidated Balance Sheets**  
**March 31, 2010 and December 31, 2009**  
**(Amounts in thousands, except share and per share amounts)**  
**(Unaudited)**

	March 31, 2010	December 31, 2009
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 144,280	\$ 152,888
Accounts receivable, net of allowance for doubtful accounts of \$12,027 and \$11,892, respectively	204,812	201,308
Deferred income taxes	8,365	8,365
Prepaid expenses and other current assets	28,188	22,380
Total current assets	385,645	384,941
Property and equipment, net	610,613	619,048
Goodwill	303,998	300,597
Intangible assets, net	129,137	134,647
Other assets, net	24,282	18,347
Total assets	<u>\$ 1,453,675</u>	<u>\$ 1,457,580</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 59,590	\$ 63,528
Accrued expenses	29,847	34,885
Accrued payroll and related liabilities	17,041	34,512
Accrued taxes	29,287	37,203
Accrued commissions	17,878	18,180
Accrued capital expenditures	5,079	8,625
Accrued interest	20,529	13,376
Deferred revenue	62,332	62,215
Current portion capital lease obligations	6,148	4,786
Total current liabilities	247,731	277,310
Long-term debt and capital lease obligations	955,040	921,271
Other long-term liabilities	58,964	59,939
Total liabilities	<u>1,261,735</u>	<u>1,258,520</u>
Commitments and contingencies (Note 8)		
Stockholders' equity:		
Common stock, \$.01 par value; 300,000,000 authorized shares at March 31, 2010 and December 31, 2009, 146,085,969 shares issued and outstanding at March 31, 2010; 145,284,100 shares issued and outstanding at December 31, 2009	1,461	1,453
Additional paid-in capital	773,779	771,369
Accumulated deficit	(583,300)	(573,762)
Total stockholders' equity	191,940	199,060
Total liabilities and stockholders' equity	<u>\$ 1,453,675</u>	<u>\$ 1,457,580</u>

See notes to condensed consolidated financial statements.

**PAETEC Holding Corp. and Subsidiaries**  
**Condensed Consolidated Statements of Operations and Comprehensive Loss**  
**Three Months Ended March 31, 2010 and 2009**  
**(Amounts in thousands, except share and per share amounts)**  
**(Unaudited)**

	<b>Three Months Ended March 31,</b>	
	<b>2010</b>	<b>2009</b>
Revenue:		
Network services revenue	\$ 310,474	\$ 317,076
Carrier services revenue	63,043	68,749
Integrated solutions revenue	16,534	13,425
Total revenue	390,051	399,250
Cost of sales (exclusive of operating items shown separately below)	192,749	198,983
Selling, general and administrative expenses (exclusive of operating items shown separately below and inclusive of stock-based compensation)	134,260	141,018
Sales and use tax settlement	—	(1,200)
Depreciation and amortization	47,173	46,213
Income from operations	15,869	14,236
Debt extinguishment and related costs	4,423	—
Other income, net	(112)	(435)
Interest expense	22,037	17,224
Loss before income taxes	(10,479)	(2,553)
(Benefit from) provision for income taxes	(941)	755
Net loss	(9,538)	(3,308)
Other comprehensive income:		
Change in fair value of hedge instruments, net of income taxes	—	1,500
Comprehensive loss	\$ (9,538)	\$ (1,808)
Basic and diluted net loss per common share	\$ (0.07)	\$ (0.02)
Basic and diluted weighted average common shares outstanding	145,490,947	140,856,227

See notes to condensed consolidated financial statements.



**PAETEC Holding Corp. and Subsidiaries**  
**Condensed Consolidated Statements of Cash Flows**  
**Three Months Ended March 31, 2010 and 2009**  
**(Amounts in thousands)**  
**(Unaudited)**

	<b>Three Months Ended March 31,</b>	
	<b>2010</b>	<b>2009</b>
<b>OPERATING ACTIVITIES:</b>		
Net loss	\$ (9,538)	\$ (3,308)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	47,173	46,213
Amortization of debt issuance costs	659	513
Amortization of debt discount, net	328	274
Bad debt expense	4,141	4,502
Stock-based compensation expense	2,462	4,762
Sales and use tax settlement	—	(1,200)
Gain on non-monetary transaction	—	(141)
(Gain) loss on disposal of property and equipment	(23)	8
Deferred income taxes	(1,342)	—
Debt extinguishment and related costs	3,667	—
Change in assets and liabilities which provided (used) cash, excluding effects of acquisitions:		
Accounts receivable	(4,604)	(10,923)
Prepaid expenses and other current assets	(5,806)	(5,212)
Other assets	729	478
Accounts payable	(1,807)	(14,627)
Accrued expenses	(9,395)	(2,543)
Accrued payroll and related liabilities	(17,472)	(3,671)
Accrued taxes	(7,944)	44
Accrued commissions	(302)	1,163
Accrued interest	7,153	(7,110)
Deferred revenue	(251)	1,938
Net cash provided by operating activities	<u>7,828</u>	<u>11,160</u>
<b>INVESTING ACTIVITIES:</b>		
Purchases of property and equipment	(29,474)	(29,985)
Acquisitions, net of cash received	(5,035)	(265)
(Increase) decrease in restricted cash	(314)	1,344
Proceeds from disposal of property and equipment	208	60
Software development costs	(382)	(296)
Net cash used in investing activities	<u>(34,997)</u>	<u>(29,142)</u>
<b>FINANCING ACTIVITIES:</b>		
Repayments of long-term debt	(275,652)	(2,176)
Payment for debt issuance costs	(7,328)	—
Proceeds from long-term borrowings	301,584	—
Repurchase of common stock	—	(765)
Proceeds from exercise of stock options, warrants, and purchase plans	1,050	438
Payment of tax withholding on vested stock units	(1,093)	—
Net cash provided by (used in) financing activities	<u>18,561</u>	<u>(2,503)</u>
<b>NET DECREASE IN CASH AND CASH EQUIVALENTS</b>	<u>(8,608)</u>	<u>(20,485)</u>
<b>CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD</b>	<u>152,888</u>	<u>164,528</u>
<b>CASH AND CASH EQUIVALENTS, END OF PERIOD</b>	<u>\$ 144,280</u>	<u>\$ 144,043</u>
<b>SUPPLEMENTAL CASH FLOW INFORMATION:</b>		
Cash paid for interest	<u>\$ 14,027</u>	<u>\$ 23,879</u>
Cash (refund) paid for income taxes	<u>\$ (15)</u>	<u>\$ 272</u>

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	Three Months Ended March 31,	
	2010	2009
SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING TRANSACTIONS:		
Accrued property and equipment expenditures	\$ 8,493	\$ 12,756
Equipment purchased under capital leases	\$ 7,401	\$ 1,208
Tenant incentive leasehold improvements	\$ 58	\$ 895
Accrued business acquisition costs (includes contingent consideration)	\$ 2,182	\$ 526

See notes to condensed consolidated financial statements.

**PAETEC Holding Corp. and Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements**

## 1. NATURE OF BUSINESS AND BASIS OF PRESENTATION

### *Nature of Business*

PAETEC Holding Corp. ("PAETEC Holding") is a Delaware corporation that, through its subsidiaries, provides integrated communications services, including data and broadband Internet access services, local telephone services and domestic and international long distance services, primarily to business and institutional customers.

The accompanying historical condensed consolidated financial statements and notes reflect the financial results of PAETEC Holding and PAETEC Holding's wholly-owned subsidiaries. References to the "Company" and "PAETEC" in these Notes to Condensed Consolidated Financial Statements are to PAETEC Holding and PAETEC Holding's wholly-owned subsidiaries.

### *Segment Disclosure*

The Company operates in one segment.

### *Basis of Presentation*

The accompanying condensed consolidated financial statements are unaudited and have been prepared by the Company's management in accordance with accounting principles generally accepted in the United States of America for interim financial information and the rules and regulations of the Securities and Exchange Commission (the "SEC") for interim financial statements and accounting policies consistent, in all material respects, with those applied in preparing the Company's audited consolidated financial statements included in its Annual Report on Form 10-K for the year ended December 31, 2009 (the "2009 Form 10-K"), as filed with the SEC. In the opinion of management, these interim financial statements reflect all adjustments, including normal recurring adjustments, management considers necessary for the fair presentation of the Company's financial position, operating results and cash flows for the interim periods presented. The condensed consolidated balance sheet as of December 31, 2009 has been derived from the audited consolidated balance sheet as of that date. These unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and related notes included in the 2009 Form 10-K.

The accompanying condensed consolidated financial statements present results for the three months ended March 31, 2010. These results are not necessarily indicative of the results that may be achieved for the year ending December 31, 2010 or any other period.

### *Basis of Consolidation*

The accompanying condensed consolidated financial statements include the accounts of PAETEC Holding and PAETEC Holding's wholly-owned subsidiaries. All intercompany transactions and balances have been eliminated.

## 2. PROPERTY AND EQUIPMENT, NET

Property and equipment as of March 31, 2010 and December 31, 2009 consisted of the following:

	March 31, 2010	December 31, 2009
	(in thousands)	
Communications networks	\$ 820,659	\$ 803,674
Computer hardware and purchased software	148,218	138,281
Equipment	42,892	40,966
Office equipment, furniture and fixtures	76,439	75,751
Construction-in-progress	12,700	11,583
Land and buildings	41,635	41,632
	1,142,543	1,111,887
Accumulated depreciation	(531,930)	(492,839)
Property and equipment, net	\$ 610,613	\$ 619,048

Construction-in-progress as of March 31, 2010 and December 31, 2009 consisted primarily of costs associated with the build-out of the Company's communications network. Depreciation expense totaled \$39.5 million and \$38.3 million for the three months ended March 31, 2010 and 2009, respectively.

**PAETEC Holding Corp. and Subsidiaries**

**Notes to Condensed Consolidated Financial Statements—(Continued)**

**3. GOODWILL AND OTHER INTANGIBLE ASSETS**

***Acquisition of U.S. Energy Partners***

On February 28, 2010, the Company completed its acquisition of U.S. Energy Partners LLC (“U.S. Energy Partners”), a privately held New York limited liability company, pursuant to a merger agreement, dated as of February 10, 2010. On the closing date, U.S. Energy Partners continued in existence as a direct wholly-owned subsidiary of PAETEC Corp.

U.S. Energy Partners sells electricity to industrial, commercial, public authority and residential customers in New York State on Nation Grid, New York State Electric & Gas Corporation and the Rochester Gas and Electric Corporation local distribution company systems as an Energy Service Company.

The purchase price for the acquisition was approximately \$7.3 million in cash, including an estimated \$1.9 million of contingent consideration to be paid over the 24 months following the acquisition closing date. The merger was accounted for as an acquisition of U.S. Energy Partners by PAETEC using the purchase method in accordance with Accounting Standards Codification (“ASC”) Topic 805, *Business Combinations*. The aggregate transaction value, net of cash acquired, was \$6.9 million.

***Goodwill***

The changes in the carrying value of goodwill from January 1, 2010 to March 31, 2010 were as follows (in thousands):

Balance as of January 1, 2010	\$300,597
Goodwill related to acquisition	<u>3,401</u>
Balance as of March 31, 2010	<u>\$303,998</u>

Goodwill related to the U.S. Energy Partners acquisition is based on the Company’s preliminary allocation of purchase price and may change significantly based on various valuations that will be finalized within 12 months after the closing date.

***Other Intangible Assets***

The gross carrying amount and accumulated amortization by major intangible asset category as of March 31, 2010 and December 31, 2009 were as follows:

	<b>March 31, 2010</b>			<b>Weighted Average Amortization Period</b>
	<b>Gross Carrying Amount</b>	<b>Accumulated Amortization</b>	<b>Net</b>	
	<b>(in thousands)</b>			
<b>Amortized intangible assets:</b>				
Customer-related	\$ 207,303	\$ (89,323)	\$ 117,980	10 years
Technology-based	1,953	(1,270)	683	5 years
Capitalized software development costs	6,191	(2,405)	3,786	4 years
Technology license	5,164	(947)	4,217	5 years
Trade name	200	(129)	71	5 years
<b>Total</b>	<u>220,811</u>	<u>(94,074)</u>	<u>126,737</u>	10 years
<b>Unamortized intangible assets:</b>				
Trade name	2,400	—	2,400	
<b>Total</b>	<u>\$ 223,211</u>	<u>\$ (94,074)</u>	<u>\$ 129,137</u>	

**PAETEC Holding Corp. and Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements—(Continued)**

	<b>December 31, 2009</b>			<b>Weighted-Average Amortization Period</b>
	<b>Gross Carrying Amount</b>	<b>Accumulated Amortization (in thousands)</b>	<b>Net</b>	
<b>Amortized intangible assets:</b>				
Customer-related	\$ 205,603	\$ (82,395)	\$ 123,208	10 years
Technology-based	1,953	(1,186)	767	5 years
Capitalized software development costs	5,810	(2,093)	3,717	4 years
Technology license	5,164	(689)	4,475	5 years
Trade name	200	(120)	80	5 years
<b>Total</b>	<b>218,730</b>	<b>(86,483)</b>	<b>132,247</b>	<b>10 years</b>
<b>Unamortized intangible assets:</b>				
Trade name	2,400	—	2,400	
<b>Total</b>	<b>\$ 221,130</b>	<b>\$ (86,483)</b>	<b>\$ 134,647</b>	

Gross intangible assets as of March 31, 2010 included \$1.7 million for a customer relationship intangible asset acquired from U.S. Energy Partners. This amount is based on the Company's preliminary allocation of purchase price and may change significantly based on various valuations that will be finalized within 12 months after the closing date.

Intangible asset amortization expense for the three months ended March 31, 2010 and 2009 was \$7.6 million and \$7.9 million, respectively. The Company estimates that future aggregate amortization expense related to intangible assets as of March 31, 2010 will be as follows for the periods presented (in thousands):

<b>Year Ending December 31,</b>	
2010 (remaining nine months)	\$ 22,898
2011	27,152
2012	23,020
2013	17,088
2014	13,097
Thereafter	23,482
<b>Total</b>	<b>\$126,737</b>

#### **4. LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS**

Long-term debt as of March 31, 2010 and December 31, 2009 consisted of the following:

	<b>March 31, 2010</b>	<b>December 31, 2009</b>
	<b>(in thousands)</b>	
8 <sup>7</sup> / <sub>8</sub> % Senior Secured Notes due 2017	\$ 650,000	\$ 350,000
Unamortized discount on 8 <sup>7</sup> / <sub>8</sub> % Senior Secured Notes due 2017, net	(9,408)	(11,320)
9.5% Senior Notes due 2015	300,000	300,000
Senior secured credit facilities	—	270,232
Unamortized discount on senior secured credit facilities	—	(1,470)
Capital lease obligations	20,596	18,615
<b>Total debt</b>	<b>961,188</b>	<b>926,057</b>
Less: current portion	(6,148)	(4,786)
<b>Long-term debt</b>	<b>\$ 955,040</b>	<b>\$ 921,271</b>

**PAETEC Holding Corp. and Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements—(Continued)**

***Senior Secured Notes***

On January 12, 2010, PAETEC Holding issued and sold \$300.0 million in aggregate principal amount of its 8<sup>7</sup>/<sub>8</sub>% senior secured notes due 2017 pursuant to the indenture, dated as of June 29, 2009, as supplemented from time to time (the "Indenture"), by and among PAETEC Holding, the subsidiary guarantors named therein and The Bank of New York Mellon, as trustee. The senior secured notes issued in January 2010 (the "Notes") have the same terms as the previously issued 8<sup>7</sup>/<sub>8</sub>% senior secured notes due 2017, except that the Notes have registration rights and related additional interest terms and will be subject to transfer restrictions until consummation of the exchange offer referred to below. Accordingly, immediately following the issuance and sale of the Notes, PAETEC Holding had \$650.0 million in aggregate principal amount of its 8<sup>7</sup>/<sub>8</sub>% senior secured notes due 2017 outstanding under the Indenture.

The Company sold the Notes at an offering price of 100.528% of the principal amount of the Notes, plus accrued interest from December 31, 2009, in an offering not subject to the registration requirements of the Securities Act of 1933 (the "Securities Act"). The Company applied the gross proceeds of \$301.6 million it received from the sale of the Notes to repay \$240.2 million in aggregate principal amount of term loans and \$30.0 million in aggregate principal amount of revolving loans outstanding under its senior secured credit facilities and to pay \$8.3 million of fees incurred in connection with the termination of the remaining \$265.0 million notional amount of its swap agreement in effect as of January 12, 2010. The Company paid a total of approximately \$9.0 million of offering fees and expenses. The Company will use the remaining \$14.1 million of offering proceeds for general corporate purposes.

In connection with the Company's application of the gross proceeds received from the sale of the Notes to repay the outstanding principal amount under its senior secured credit facilities, as described above in this Note 4, the Company recognized \$4.4 million of debt extinguishment and related costs in the accompanying consolidated statements of operations and comprehensive loss. This amount represents the elimination of \$3.6 million of debt issuance costs and unamortized debt discount related to the Company's existing senior secured credit facilities that were paid in full with the proceeds from the Notes and \$0.8 million of costs related to the termination of its interest rate swap agreement.

In connection with the closing of the sale of Notes, the Company entered into a registration rights agreement, dated as of January 12, 2010, pursuant to which the Company has agreed to use commercially reasonable efforts to file a registration statement with the SEC to exchange the Notes for a new issue of substantially identical debt securities in an exchange registered under the Securities Act or, if required, to file a shelf registration statement to cover resales of the Notes under certain circumstances. If (1) the Company fails either to (a) cause the exchange offer registration statement to be declared effective or to consummate the exchange offer within the period specified in the registration rights agreement or (b) if required, cause any shelf registration statement with respect to resales of the Notes to be declared effective within the period specified in the registration rights agreement or (2) any shelf registration statement is declared effective but thereafter ceases to be effective or usable, subject to specified exceptions, in connection with resales of the Notes, the Company will be required to pay additional interest to the holders of the Notes under certain circumstances. The maximum amount of additional interest payable in any such event may not exceed 1.0% per annum of the principal amount of the Notes.

***Senior Credit Facilities***

Immediately following the sale of the Notes and the Company's application of the offering proceeds to the foregoing uses, the Company's senior secured credit facilities consisted of the following:

- a term loan credit facility under which no term loans were outstanding and under which the Company could obtain incremental term loans, subject to conditions, in an aggregate principal amount of up to approximately \$65.0 million under one or more incremental facilities; and
- a revolving credit facility under which no revolving loans were outstanding and under which the Company could obtain from time to time revolving loans of up to an aggregate principal amount of \$50.0 million outstanding at any time.

***Financial Covenant***

Under the terms of the total leverage ratio covenant contained in the Company's credit agreement for its senior credit facilities, the Company's ratio of consolidated debt to consolidated adjusted EBITDA (as defined for purposes of the credit agreement) as of any measurement date will not be permitted to be greater than 5.00: 1.00. The Company was in compliance with this financial covenant as of March 31, 2010.

**PAETEC Holding Corp. and Subsidiaries**
**Notes to Condensed Consolidated Financial Statements—(Continued)**
***Fair Value of Financial Instruments***

The carrying value of the Company's financial instruments, other than debt, does not materially differ from the estimated fair values as of March 31, 2010. As of March 31, 2010, the \$300.0 million principal amount of the Company's 9.5% senior notes due 2015 had an estimated fair market value of approximately \$303.0 million, and the \$650.0 million principal amount of the Company's 8<sup>7</sup>/8% senior secured notes due 2017 had an estimated fair market value of approximately \$663.0 million. The estimated market values as of March 31, 2010 are based on quarter-end closing market prices published by securities firms. While the Company believes these approximations to be reasonably accurate at the time published, quarter-end closing market prices can vary widely depending on volume traded by any given security firm and other factors.

**5. INCOME TAXES**

The Company completed a reorganization involving some of PAETEC Holding Corp.'s direct and indirect wholly-owned subsidiaries during the three months ended March 31, 2010. The benefit for income taxes for the three months ended March 31, 2010 reflects the impact to deferred taxes from the reorganization, net of certain current state taxes and income taxes in selected jurisdictions where net operating losses are not available.

ASC 740 requires the recognition of a financial statement benefit of a tax position only after a determination that the relevant tax authority would more likely than not sustain the position following an audit. For tax positions meeting the more-likely-than-not threshold, the amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant tax authority. The amount of unrecognized tax benefits from uncertain tax positions as of March 31, 2010 was \$0.4 million, the majority of which, if recognized, would affect the effective tax rate.

The Company recognizes interest and penalties accrued on unrecognized tax benefits as a component of the provision for income taxes. As of March 31, 2010, the Company had less than \$0.1 million of accrued interest related to unrecognized tax benefits.

The Company files U.S. federal income tax returns and income tax returns in various state jurisdictions. The Company is no longer subject to U.S. federal, state, and local tax examinations in major tax jurisdictions for periods before the year ended December 31, 2005.

**6. SHARE-BASED TRANSACTIONS**
***Employee Stock Purchase Plan***

For the purchase period ended March 31, 2010, PAETEC Holding issued 143,297 shares of common stock pursuant to its Employee Stock Purchase Plan ("ESPP") at a purchase price of approximately \$4.21 per share, which represented 90% of the closing price of the common stock on March 31, 2010 as reported on the NASDAQ Global Select Market. Compensation expense attributable to the ESPP for the three months ended March 31, 2010 totaled less than \$0.1 million. As of March 31, 2010, 2,573,505 shares of common stock remained available for issuance under the ESPP.

***Stock Option Activity***

The following table summarizes stock option activity for the three months ended March 31, 2010:

	Shares of Common Stock Underlying Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (years)	Aggregate Intrinsic Value (in thousands)
Outstanding at January 1, 2010	11,623,516	\$ 4.42		
Granted	631,115	\$ 4.25		
Exercised	(206,686)	\$ 2.16		
Canceled	(587,687)	\$ 6.51		
Forfeited	(32,866)	\$ 4.84		
Outstanding at March 31, 2010	11,427,392	\$ 4.34	5.4	\$ 15,773
Exercisable at March 31, 2010	9,089,166	\$ 4.28	4.6	\$ 12,811

**PAETEC Holding Corp. and Subsidiaries**
**Notes to Condensed Consolidated Financial Statements—(Continued)**

The aggregate intrinsic value in the table above represents the total pretax intrinsic value (the difference between the closing sale price of PAETEC Holding's common stock as reported on the NASDAQ Global Select Market on March 31, 2010 and the exercise price, multiplied by the number of in-the-money options) that would have been received by the option holders if all option holders had exercised their options on March 31, 2010. This amount changes based on the fair market value of PAETEC Holding's common stock. The aggregate intrinsic value of options exercised during the three months ended March 31, 2010 was approximately \$0.4 million.

For options granted during the three months ended March 31, 2010 and 2009, the weighted average fair value of the stock options granted, estimated on the dates of grant using the Black-Scholes option-pricing model, was \$2.91 and \$0.83, respectively, using the following assumptions:

	<b>Three Months Ended March 31,</b>	
	<b>2010</b>	<b>2009</b>
Expected option life (in years)	6.2	6.0
Risk free interest rate	2.7% – 3.0%	2.0% – 2.3%
Expected volatility	75.5% – 75.6%	73.8% – 75.0%
Expected dividend yield	—	—

Total compensation expense related to stock options granted totaled approximately \$0.7 million for the three months ended March 31, 2010 and approximately \$1.9 million for the three months ended March 31, 2009. These amounts are recorded as part of selling, general and administrative expenses in the accompanying condensed consolidated statements of operations and comprehensive loss.

The following table summarizes stock option information as of March 31, 2010:

<b>Range of Exercise Prices</b>	<b>Options Outstanding</b>		<b>Options Exercisable</b>	
	<b>Number of Options</b>	<b>Weighted Average Exercise Price</b>	<b>Number of Options</b>	<b>Weighted Average Exercise Price</b>
\$0.00 - \$2.10	3,025,121	\$ 1.68	2,477,412	\$ 1.75
\$2.11 - \$3.15	1,449,450	\$ 2.33	1,234,330	\$ 2.33
\$3.16 - \$7.35	4,824,192	\$ 4.28	3,796,743	\$ 4.32
\$7.36 - \$13.46	2,128,629	\$ 9.64	1,580,681	\$ 9.70
	<b>11,427,392</b>	<b>\$ 4.34</b>	<b>9,089,166</b>	<b>\$ 4.28</b>

As of March 31, 2010, there was approximately \$5.3 million of total unrecognized stock-based compensation expense related to unvested stock options. The Company expects to recognize the expense over a weighted average period of approximately 1.7 years.



**PAETEC Holding Corp. and Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements—(Continued)**

**Stock Unit Activity**

The following table summarizes stock unit activity for the three months ended March 31, 2010:

	Shares of Common Stock Underlying Stock Units	Weighted Average Grant Date Fair Value
Outstanding at January 1, 2010	4,567,066	\$ 5.64
Granted	1,252,765	\$ 3.68
Vested	(718,037)	\$ 3.21
Forfeited	(38,639)	\$ 5.72
Outstanding at March 31, 2010	5,063,155	\$ 5.22

The weighted average grant date fair values of stock units granted during the three months ended March 31, 2010 and 2009, as determined by reference to the closing sale prices of PAETEC Holding's common stock as reported on the NASDAQ Global Select Market on the dates of grant, were \$3.68 and \$0.87, respectively.

The aggregate intrinsic value of stock units that vested during the three months ended March 31, 2010 was approximately \$2.9 million.

To satisfy income tax withholding requirements in connection with the vesting of stock units during the three months ended March 31, 2010, the Company withheld shares of PAETEC Holding common stock totaling 267,032 shares.

For the three months ended March 31, 2010, the total compensation expense related to stock units granted was approximately \$1.7 million. For the three months ended March 31, 2009, the total compensation expense related to stock units granted was approximately \$2.8 million. These amounts are recorded as part of selling, general and administrative expenses in the accompanying condensed consolidated statements of operations and comprehensive loss.

As of March 31, 2010, there was unrecognized stock-based compensation expense related to unvested stock unit awards of approximately \$17.1 million. The Company expects to recognize the expense over a weighted-average period of approximately 1.6 years.

**Warrant Activity**

The following table summarizes warrant activity for the three months ended March 31, 2010:

	Shares of Common Stock Underlying Warrants	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (years)	Aggregate Intrinsic Value (in thousands)
Outstanding at January 1, 2010	2,562,771	\$ 2.41		
Granted	—			
Exercised	(4,057)	3.39		
Canceled	—			
Forfeited	(6,492)	3.86		
Outstanding at March 31, 2010	2,552,222	\$ 2.41	4.3	\$ 5,826
Exercisable at March 31, 2010	2,002,222	\$ 2.28	2.9	\$ 4,842

The aggregate intrinsic value in the table above represents the total pretax intrinsic value (the difference between the closing sale price of PAETEC Holding's common stock as reported on the NASDAQ Global Select Market on March 31, 2010 and the warrant exercise price, multiplied by the number of in-the-money warrants) that would have been received by the warrant holders if all warrant holders had exercised their warrants on March 31, 2010. This amount changes based on the fair market value of PAETEC Holding's common stock. The aggregate intrinsic value of warrants exercised during the three months ended March 31, 2010 was less than \$0.1 million.

**PAETEC Holding Corp. and Subsidiaries**

**Notes to Condensed Consolidated Financial Statements—(Continued)**

No stock-based compensation expense related to warrants was recognized during the three months ended March 31, 2010. For the three months ended March 2009 stock-based compensation expense related to warrants totaled less than \$0.1 million.

The following table summarizes information relating to outstanding warrants as of March 31, 2010:

Range of Exercise Prices	Warrants Outstanding		Warrants Exercisable	
	Number of Warrants	Weighted Average Exercise Price	Number of Warrants	Weighted Average Exercise Price
\$0.00 - \$2.78	1,709,594	\$ 1.98	1,709,594	\$ 1.98
\$2.79 - \$4.00	695,753	\$ 2.97	145,753	\$ 3.25
\$4.01 - \$5.00	146,875	\$ 4.70	146,875	\$ 4.70
	<u>2,552,222</u>	\$ 2.41	<u>2,002,222</u>	\$ 2.28

## 7. LOSS PER COMMON SHARE

The computation of basic and diluted net loss per common share for the three months ended March 31, 2010 and 2009 was as follows:

	Three Months Ended March 31, (in thousands, except share and per share data)	
	2010	2009
Net loss	\$ (9,538)	\$ (3,308)
Weighted average common shares outstanding – basic and diluted	145,490,947	140,856,227
Net loss per common share – basic and diluted	\$ (0.07)	\$ (0.02)

For the three months ended March 31, 2010 and 2009, the Company had outstanding options, warrants and restricted stock units for 19,042,769 and 25,912,602 shares, respectively, which were convertible into or exercisable for common shares that were not included in the calculation of diluted loss per common share because the effect would have been anti-dilutive.

## 8. COMMITMENTS AND CONTINGENCIES

### *Purchase Commitments*

As of March 31, 2010, the Company had entered into agreements with vendors to purchase approximately \$14.7 million of equipment and services, of which the Company expects \$11.5 million to be delivered and payable in the year ending December 31, 2010, \$2.1 million in the year ending December 31, 2011, and \$1.1 million in the year ending December 31, 2012.

### *Data and Voice Services*

The Company has various agreements with certain carriers for data and voice services. As of March 31, 2010, the Company's minimum commitments under these agreements totaled \$232.6 million, of which \$89.0 million expire in the year ending December 31, 2010, \$118.7 million expire in the year ending December 31, 2011, \$11.5 million expire in the year ending December 31, 2012, \$11.5 million expire in the year ending December 31, 2013, and the remaining \$1.9 million expire in the year ending December 31, 2014. Related expenses, when incurred, are included in cost of sales in the accompanying condensed consolidated statements of operations and comprehensive loss.

### *Regulation*

The Company's services are subject to varying degrees of federal, state and local regulation. These regulations are subject to ongoing proceedings at federal and state administrative agencies or within state and federal judicial systems. Results of these proceedings could change, in varying degrees, the manner in which the Company operates. The Company cannot predict the outcome of these proceedings or their effect on the Company's industry generally or on the Company specifically.

## PAETEC Holding Corp. and Subsidiaries

## Notes to Condensed Consolidated Financial Statements—(Continued)

**Interconnection and Network Access Agreements**

The Company is dependent on the use of incumbent local exchange carriers' local and transport networks and access services to provide telecommunications services to its customers. Charges for leasing local and transport network components and purchasing special access services historically have made up a significant percentage of the Company's overall cost of providing the services. These network components and services are purchased in each PAETEC market through interconnection agreements, special access contracts, commercial agreements or a combination of such agreements from the incumbent local exchange carrier, or, where available, from other wholesale network service providers. These costs are recognized in the period in which the services are delivered and are included as a component of the Company's cost of sales in the accompanying condensed consolidated statements of operations and comprehensive loss.

**Letters of Credit**

The Company is party to letters of credit totaling \$7.0 million as of March 31, 2010. The Company does not expect any material losses from these financial instruments since performance under these letters of credit is not likely to be required.

**Litigation**

The Company is party to various legal proceedings, most of which relate to routine matters incidental to the Company's business. The result of any current or future litigation is inherently unpredictable. The Company's management, however, believes that there is no litigation asserted or pending against the Company that could have, individually or in the aggregate, a material adverse effect on its financial position, results of operations or cash flows, except as indicated below.

In October 2008, PaeTec Communications, Inc. filed a claim in the Supreme Court for the State of New York, County of Monroe, against Lucent Technologies, Inc., Alcatel USA Marketing, Inc. and Alcatel-Lucent (collectively "Alcatel-Lucent") for reimbursement of costs and fees in connection with the patent infringement case brought against the Company by Sprint Communications Company L.P. ("Sprint"). The Sprint action was settled in May 2009. The Company's claim against Alcatel-Lucent alleges that because the Sprint claims arose from the use by the Company of Alcatel-Lucent equipment, Alcatel-Lucent has an obligation to defend and indemnify the Company pursuant to the contract terms under which it sold the equipment to the Company. In response, Alcatel-Lucent has denied the claim and counter-claimed against the Company for allegedly unpaid switch software licensing charges, and associated late fees. The Company believes that it has meritorious defenses against these counter-claims.

**9. FAIR VALUE MEASUREMENTS**

The provisions of ASC 820, *Fair Value Measurements and Disclosures*, establishes a framework for measuring the fair value of financial assets and financial liabilities by establishing a hierarchy that categorizes and prioritizes the sources to be used to estimate fair value as follows:

Level 1 – defined as observable inputs such as quoted prices in active markets;

Level 2 – inputs include quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability (interest rates, yield curves, etc.), and inputs that are derived principally from or corroborated by observable market data by correlation or other means (market corroborated inputs); and

Level 3 – unobservable inputs that reflect the Company's determination of assumptions that market participants would use in pricing the asset or liability. These inputs are developed based on the best information available, including the Company's own data.

**PAETEC Holding Corp. and Subsidiaries**

**Notes to Condensed Consolidated Financial Statements—(Continued)**

The following table summarizes the valuation of the Company's financial instruments by the foregoing fair value hierarchy levels as of March 31, 2010 and December 31, 2009, respectively (in thousands):

	Fair Value Measurements as of March 31, 2010 Using:		
	(Level 1)	(Level 2)	(Level 3)
<b>Assets</b>			
Cash and cash equivalents	\$ 40,660	—	—
Other assets, net	\$ 2,669	—	—

	Fair Value Measurements as of December 31, 2009 Using:		
	(Level 1)	(Level 2)	(Level 3)
<b>Assets</b>			
Cash and cash equivalents	—	\$ 131,408	—
<b>Liabilities</b>			
Interest rate swaps	—	\$ 7,544	—

At March 31, 2010, the fair value of cash and cash equivalents presented in the table above were primarily composed of the Company's investments in publicly traded money market instruments. The Company's cash and cash equivalent balances excluded from the table above are composed of cash, certificates of deposits with original maturities of one month or less and overnight investments.

#### 10. RECENT ACCOUNTING PRONOUNCEMENTS

In October 2009, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2009-13, *Revenue Recognition (Topic 605)*. This ASU provides amendments to the criteria in ASC 605-25 for separating consideration in multiple-deliverable revenue arrangements. It establishes a hierarchy of selling prices to determine the selling price of each specific deliverable, which includes vendor-specific objective evidence (if available), third-party evidence (if vendor-specific evidence is not available), or estimated selling price if neither of the first two is available. This ASU also eliminates the residual method for allocating revenue between the elements of an arrangement and requires that arrangement consideration be allocated at the inception of the arrangement. Finally, this ASU expands the disclosure requirements regarding a vendor's multiple-deliverable revenue arrangements. This ASU is effective for fiscal years beginning on or after June 15, 2010. The Company is currently evaluating the impact of this ASU on its financial statements.

In October 2009, the FASB issued ASU 2009-14, *Certain Revenue Arrangements that include Software Elements*. This ASU amends accounting and reporting guidance under ASC 605-985 to exclude from its scope all tangible products containing both software and non-software components that function together to deliver the product's essential functionality. ASU 2009-14 will be effective for fiscal years beginning on or after June 15, 2010. The Company is currently evaluating the impact of this ASU on its financial statements.

#### 11. SUBSEQUENT EVENTS

In accordance with the provisions of ASC 855, *Subsequent Events*, the Company has evaluated all subsequent events to ensure that this Form 10-Q includes appropriate disclosure of events both recognized in the financial statements as of March 31, 2010, and events which occurred subsequent to March 31, 2010 but were not recognized in the financial statements. No subsequent events which required recognition or disclosure were identified.

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

*Except for statements that present historical facts, this management's discussion and analysis contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. In some cases, you can identify these statements by such forward-looking words as "anticipate," "believe," "could," "estimate," "expect," "intend," "may," "plan," "potential," "should," "will" and "would," or similar expressions. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual operating results, financial position, levels of activity or performance to be materially different from those expressed or implied by such forward-looking statements. Some of these risks, uncertainties and factors are discussed under the caption "Item 1A. Risk Factors" in our Annual Report on Form 10-K for our 2009 fiscal year and in our subsequently filed SEC reports.*

*You should read the following management's discussion and analysis in conjunction with our Annual Report on Form 10-K for our 2009 fiscal year and together with the condensed consolidated financial statements and related notes and the other financial information that appear elsewhere in this report.*

*Unless the context indicates otherwise, references in this management's discussion and analysis to "we," "us," "our," "PAETEC Holding" and "PAETEC" mean PAETEC Holding Corp. and its subsidiaries.*

**Overview**

PAETEC is a competitive communications services and solutions provider guided by the principle that delivering superior customer service is the key to competing successfully with other communications services providers. PAETEC's primary business is providing large, medium-sized and, to a lesser extent, small business end-user customers in metropolitan areas with a package of integrated communications services that encompasses data services, including broadband Internet access services and virtual private network services, and voice services, including local telephone services and domestic and international long distance services. As of March 31, 2010, PAETEC Holding had in service 236,168 digital T1 transmission lines, which represented the equivalent of 5,668,032 access lines, for approximately 43,000 business customers in a service area encompassing 84 of the top 100 metropolitan statistical areas. As of the same date, PAETEC also had in service an incremental 326,408 access lines related to the company's non-core "plain old telephone service," or "POTS," operations.

**Revenue.** PAETEC derives revenue from sales of its network services, carrier services and integrated solutions services. PAETEC derives most of its revenue from monthly recurring fees and usage-based fees that are generated principally by sales of its network services.

Monthly recurring fees include the fees paid by PAETEC's customers for lines in service and additional features on those lines. PAETEC primarily bills monthly recurring fees in advance.

Usage-based fees consist of fees paid by PAETEC's network services customers for each call made, fees paid by the incumbent carriers in PAETEC's markets as "reciprocal compensation" when PAETEC terminates local calls made by their customers, and access fees paid by other carriers for long distance calls PAETEC originates or terminates for those carriers.

The monthly recurring fees and usage-based fees generated by sales of PAETEC's network services to end users and carrier services to any customer tend to be relatively consistent from month to month, subject to changes in the calling patterns of the customer's business. These fees generally are based on the number of digital T1 transmission lines used by the customer. Because PAETEC believes that the cumulative number of digital T1 transmission lines in service provides accurate information with respect to its revenue prospects, the company uses data with respect to the cumulative number of digital T1 transmission lines PAETEC has in service from period to period to assist it in evaluating revenue trends related to its network services and carrier services businesses.

**Network Services.** PAETEC delivers integrated communications services, including data and Internet services, local services and long distance services, to end users on a retail basis, which the company refers to as its "network services." PAETEC's core network services are those that generate revenue from retail enterprise customers to which PAETEC delivers such integrated communications services on primarily T1 or larger access lines, which excludes access fee and reciprocal compensation fee revenue related to network services and revenue from the company's POTS operations. POTS operations involve the provision of basic telephone services supplying standard single line telephones, telephone lines and access to the public switched network.

PAETEC's network services revenue consists primarily of monthly recurring fees and usage-based fees. In addition to usage-based fees invoiced directly to the end-user customers, usage-based fees for PAETEC's network services include the interstate and intrastate access fees the company receives from other communications providers when it originates or terminates long-distance calls for those other providers to or from PAETEC's network services customers, and the reciprocal compensation fees PAETEC receives from some other local carriers when it terminates non-toll calls originated by customers of other carriers. PAETEC recognizes revenue during the period in which the revenue is earned. PAETEC's network services also generate non-recurring service activation and installation fee revenues, which it receives upon initiation of service. PAETEC defers recognition of these revenues and amortizes them over the average customer life.

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**Carrier Services.** PAETEC generates revenue from wholesale sales of communications services to other communications businesses, which the company refers to as its “carrier services.” PAETEC’s core carrier services are those that generate revenue from other communications providers, which excludes access fee and reciprocal compensation fee revenue related to carrier services and revenue from the company’s non-core POTS operations.

PAETEC’s carrier services revenue consists primarily of monthly recurring fees and usage-based fees. Usage-based fees for PAETEC’s carrier services consist primarily of the interstate and intrastate access fees the company receives from other communications providers when it originates or terminates long distance calls for those other providers to or from PAETEC’s carrier services customers, and the reciprocal compensation fees PAETEC receives from some other local carriers when it terminates to its carrier services customers local calls made by customers of other local carriers.

**Integrated Solutions.** PAETEC derives revenue from sales to retail end-user customers of telecommunications equipment and software and related services, which the company refers to as its “integrated solutions.”

A portion of PAETEC’s integrated solutions revenue consists of fees its customers pay for equipment and for PAETEC’s system design and installation services. PAETEC recognizes revenue for equipment sales and system design and installation services upon delivery and acceptance of the underlying equipment.

PAETEC derives an additional component of its integrated solutions revenue by selling and supporting its proprietary telecommunications software. PAETEC recognizes revenue related to software sales upon delivery of the software. Support fees include fees for maintenance of PAETEC’s telecommunications software and fees for training the end user in the proper use of that software. PAETEC recognizes maintenance fees on a pro rata basis over the length of the underlying maintenance contract and training fees after it fulfills the training obligation.

**Cost of Sales.** PAETEC provides its network services and carrier services by using electronic network components that it owns and telephone and data transmission lines that it leases from other telecommunications carriers. PAETEC’s cost of sales for these services consists primarily of leased transport charges and usage costs for local and long distance calls. PAETEC’s leased transport charges are the payments it makes to lease the telephone and data transmission lines, which the company uses to connect its customers to its network and to connect its network to the networks of other carriers. Usage costs for local and long distance are the costs that PAETEC incurs for calls made by its customers. Cost of sales for PAETEC’s integrated solutions includes the costs it incurs in designing systems and purchasing and installing equipment.

**Selling, General and Administrative Expenses.** PAETEC’s selling, general and administrative expenses include selling and marketing, customer service, billing, corporate administration, engineering personnel and other personnel costs.

**Depreciation and Amortization.** Depreciation and amortization include depreciation of PAETEC’s telecommunications network and equipment, computer hardware and purchased software, office equipment, furniture and fixtures, and buildings, as well as amortization of intangible assets.

**Debt Extinguishment and Related Costs.** PAETEC’s debt extinguishment and related costs include expenses related to the repayment of outstanding term loans under PAETEC’s senior secured credit facilities and costs incurred related to the termination of PAETEC’s interest rate swap agreement in January 2010.

**Interest Expense.** Interest expense includes interest due on PAETEC’s long-term debt and capital leases, amortization of debt issuance costs, debt premiums, and debt discounts.

**Other Income, Net.** Other income, net includes non-monetary gains on the exchange of reciprocal indefeasible rights of use, or “IRUs,” investment income, and other financing income.

**Accounting for Income Taxes.** PAETEC recognizes deferred income tax assets and liabilities for the expected future tax consequences of transactions and events. Under this method, PAETEC determines deferred income tax assets and liabilities based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which it expects the differences to reverse. If necessary, PAETEC reduces deferred income tax assets by a valuation allowance to an amount that it determines is more likely than not to be recoverable. PAETEC makes significant estimates and assumptions about future taxable income and future tax consequences to determine the amount of the valuation allowance.

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### Stock-Based Compensation

PAETEC's employees participate in a variety of equity incentive plans. Stock-based compensation expense for all stock-based compensation awards is based on the grant date fair value estimated in accordance with the Financial Accounting Standards Board, or "FASB," Accounting Standards Codification, or "ASC," Topic 718, *Compensation—Stock Compensation*. PAETEC recognizes these compensation costs, net of an estimated forfeiture rate, ratably over the requisite service period of the award.

### Results of Operations

The following table presents selected operating data for the three months ended March 31, 2010, which we refer to as our "2010 quarter," and the three months ended March 31, 2009, which we refer to as our "2009 quarter." PAETEC's operating results for the 2010 and 2009 quarters were as follows (dollars in thousands):

	Three Months Ended March 31, 2010		Three Months Ended March 31, 2009	
	\$	% of Revenue	\$	% of Revenue
Revenue:				
Network services revenue	\$ 310,474	80%	\$ 317,076	79%
Carrier services revenue	63,043	16%	68,749	17%
Integrated solutions revenue	16,534	4%	13,425	3%
Total revenue	390,051	100%	399,250	100%
Cost of sales	192,749	49%	198,983	50%
Selling, general and administrative expenses <sup>(2)</sup>	134,260	34%	141,018	35%
Sales and use tax settlement	—	*	(1,200)	*
Depreciation and amortization	47,173	12%	46,213	12%
Income from operations	15,869	4%	14,236	4%
Debt extinguishment and related costs	4,423	1%	—	*
Other income, net	(112)	*	(435)	*
Interest expense	22,037	6%	17,224	4%
Loss before income taxes	(10,479)	(3)%	(2,553)	(1)%
(Benefit from) provision for income taxes	(941)	*	755	*
Net loss	\$ (9,538)	(2)%	\$ (3,308)	(1)%
Adjusted EBITDA <sup>(3)</sup>	\$ 65,543		\$ 63,922	

\* Less than one percent

(1) Exclusive of operating items shown separately below.

(2) Exclusive of operating items shown separately below and inclusive of stock-based compensation.

(3) Adjusted EBITDA, as defined by PAETEC for the periods presented, represents net loss before depreciation and amortization, interest expense, (benefit from) provision for income taxes, stock-based compensation, debt extinguishment and related costs, sales and use tax settlement, and gain on non-monetary transaction. Adjusted EBITDA is not a financial measurement prepared in accordance with accounting principles generally accepted in the United States of America, or "GAAP." See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Overview—Adjusted EBITDA Presentation" in our Annual Report on Form 10-K for our 2009 fiscal year for our reasons for including adjusted EBITDA data in this report and for material limitations with respect to the usefulness of this measurement. The following table sets forth, for the periods indicated, a reconciliation of adjusted EBITDA to net loss, as net loss is calculated in accordance with GAAP (in thousands):

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	Three Months Ended March 31, 2010	Three Months Ended March 31, 2009
Net loss	\$ (9,538)	\$ (3,308)
Add back non-EBITDA items included in net loss:		
Depreciation and amortization	47,173	46,213
Interest expense, net of interest income	21,964	16,841
(Benefit from) provision for income taxes	(941)	755
EBITDA	58,658	60,501
Stock-based compensation	2,462	4,762
Debt extinguishment and related costs	4,423	—
Sales and use tax settlement	—	(1,200)
Gain on non-monetary transaction	—	(141)
Adjusted EBITDA	\$ 65,543	\$ 63,922

### Three Months Ended March 31, 2010 Compared With Three Months Ended March 31, 2009

**Revenue.** Total revenue decreased \$9.2 million, or 2.3%, to \$390.1 million for the 2010 quarter from \$399.3 million for the 2009 quarter, primarily due to a decline in usage-based revenue and a \$4.6 million decline in non-core POTS revenue. Of total revenue for the 2010 quarter, revenue from network services, carrier services and integrated solutions accounted for 79.6%, 16.2% and 4.2%, respectively, compared to 79.4%, 17.2% and 3.4%, respectively, for the 2009 quarter.

Revenue from network services decreased \$6.6 million, or 2.1%, to \$310.5 million for the 2010 quarter from \$317.1 million for the 2009 quarter. For the 2010 quarter, revenue from monthly recurring fees and usage-based fees accounted for 72.8% and 26.0%, respectively, of revenue from network services, compared to 71.8% and 27.3%, respectively, of such revenue for the 2009 quarter. Revenue from core network services accounted for 72.6% of total revenue for the 2010 quarter, compared to 71.7% for the 2009 quarter. Revenue from core network services decreased \$3.1 million, or 1.1%, to \$283.1 million for the 2010 quarter from \$286.3 million for the 2009 quarter. The decrease in core network services revenue primarily resulted from a decline in usage-based revenue, which was partially offset by a 5.0% increase in data revenue generated by increased sales of its Dynamic IP and MPLS VPN products.

Revenue from carrier services decreased \$5.7 million, or 8.3%, to \$63.0 million for the 2010 quarter from \$68.7 million for the 2009 quarter. Revenue from core carrier services accounted for 11.4% of total revenue for the 2010 quarter, compared to 12.3% for the 2009 quarter. The decrease in carrier services revenue primarily resulted from a decline in usage-based revenue. For the 2010 quarter, revenue from monthly recurring fees and usage-based fees accounted for 48.2% and 42.6%, respectively, of revenue from carrier services, compared to 43.7% and 48.2%, respectively, of such revenue for the 2009 quarter.

Access fee revenue and reciprocal compensation included in network services revenue and access fee revenue and reciprocal compensation included in carrier services revenue together accounted for 8.3% of total revenue for the 2010 quarter, compared to 8.2% for the 2009 quarter. Reciprocal compensation revenue included in network services revenue and reciprocal compensation revenue included in carrier services revenue together accounted for 1.0% of total revenue for the 2010 quarter, compared to 1.4% for the 2009 quarter. Access fee revenue as a percentage of network services usage-based fees increased to 20.2% for the 2010 quarter from 18.4% for the 2009 quarter, while reciprocal compensation as a percentage of network services usage-based fees decreased to 1.8% for the 2010 quarter from 2.2% for the 2009 quarter. Network access fee revenue as a percentage of total network services usage-based revenue increased primarily due to a decline in end user-based usage revenue. Access fee revenue as a percentage of carrier services usage-based fees increased to 45.6% for the 2010 quarter from 34.1% for the 2009 quarter. Reciprocal compensation as a percentage of carrier services usage-based fees decreased to 9.4% for the 2010 quarter from 10.5% for the 2009 quarter. The increase in access fees as a percentage of carrier services usage-based fees was principally attributable to a decline in end user-based usage revenue.

Revenue from integrated solutions services increased \$3.1 million, or 23.2%, to \$16.5 million for the 2010 quarter from \$13.4 million for the 2009 quarter. The increase in revenue generated by the integrated solutions business was attributable to growth in both equipment sales and energy services.

**Cost of Sales.** Cost of sales decreased to \$192.7 million for the 2010 quarter from \$199.0 million for the 2009 quarter, in part because of a decline in minutes of use as PAETEC's product mix continues to evolve away from more usage-sensitive products.



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Leased transport charges increased to \$153.0 million, or 79.4% of cost of sales, for the 2010 quarter from \$151.8 million, or 76.3% of cost of sales, for the 2009 quarter. The increase as a percentage of cost of sales was primarily attributable to the cost associated with the increased number of digital T1 transmission lines in service and to a decline in usage costs.

Usage costs for local and long distance calls decreased to \$29.4 million, or 15.2% of cost of sales, for the 2010 quarter from \$38.4 million, or 19.3% of cost of sales, for the 2009 quarter. The decrease was attributable to a decline in the average usage rates PAETEC is charged by network providers, as well as to a decline in minutes of use.

Cost of sales as a percentage of total revenue decreased slightly from 49.8% for the 2009 quarter to 49.4% for the 2010 quarter.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses decreased to \$134.3 million for the 2010 quarter from \$141.0 million for the 2009 quarter. Salaries, wages and benefits decreased by \$3.9 million, primarily due to a decrease in bonus expense. Selling, general and administrative expenses as a percentage of total revenue decreased to 34.4% for the 2010 quarter from 35.3% for the 2009 quarter.

*Depreciation and Amortization.* Depreciation and amortization expense increased to \$47.2 million for the 2010 quarter from \$46.2 million for the 2009 quarter. The increase was primarily attributable to PAETEC's network deployment and maintenance activities.

*Debt Extinguishment and Related Costs.* During the 2010 quarter, PAETEC recognized a total of \$4.4 million of debt extinguishment and related costs, which represented the elimination of \$3.6 million of debt issuance costs and unamortized debt discount associated with the repayment of \$240.2 million in aggregate principal amount of term loans and \$30.0 million in aggregate principal amount of revolving loans outstanding under its senior secured credit facilities with the proceeds from the January 2010 issuance of its 8<sup>7</sup>/<sub>8</sub>% senior secured notes due 2017 and \$0.8 million of costs related to the termination of its interest rate swap agreement.

*Interest Expense.* PAETEC's average outstanding debt balances increased to \$946.0 million for the 2010 quarter from \$935.7 million for the 2009 quarter, as a result of the January 2010 issuance of \$300 million aggregate principal amount of its 8<sup>7</sup>/<sub>8</sub>% senior secured notes due 2017 and the repayment of the outstanding principal amount under its senior secured credit facilities. Interest expense increased to \$22.0 million for the 2010 quarter from \$17.2 million for the 2009 quarter due to the higher debt levels and an increase in the average annual borrowing rate. The weighted average annual borrowing rate under PAETEC's 9.5% senior notes due 2015 and senior secured notes as of March 31, 2010 was 9.1%, compared to 7.2% under PAETEC's senior credit facility agreement and its senior notes as of March 31, 2009.

*Income Taxes.* PAETEC completed a reorganization involving some of PAETEC Holding Corp.'s direct and indirect wholly-owned subsidiaries during the 2010 quarter. The benefit from income taxes for the 2010 quarter reflects the impact to deferred taxes from the reorganization, net of certain current state taxes and income taxes in selected jurisdictions where net operating losses are not available. The difference between the statutory rate and the effective tax rate for the 2010 quarter was primarily attributable to the existence of a valuation allowance on PAETEC's net deferred tax assets.

### ***Liquidity and Capital Resources***

PAETEC finances its operations and growth primarily with cash flow from operations, issuances of debt securities, and other loans, operating leases and normal trade credit terms.

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*Sources and Uses of Cash* . PAETEC's cash flows for the three months ended March 31, 2010 and 2009, respectively, were as follows (in thousands):

	Three Months Ended March 31,	
	2010	2009
Net cash provided by operating activities	\$ 7,828	\$ 11,160
Net cash used in investing activities	\$ (34,997)	\$ (29,142)
Net cash provided by (used in) financing activities	\$ 18,561	\$ (2,503)

The \$3.3 million decrease in cash flows from operating activities for the 2010 quarter over the 2009 quarter was primarily attributable to a \$4.1 million decrease in net income adjusted for non-cash items which was partially offset by a \$0.8 million increase in working capital.

PAETEC's investing activities during the 2010 and 2009 quarters consisted primarily of activities related to the purchase and installation of property and equipment. Investing activities during the 2010 quarter also included the acquisition of U.S. Energy Partners LLC.

Net cash provided by financing activities of \$18.6 million for the 2010 quarter was primarily related to the issuance and sale of \$300.0 million in aggregate principal amount of its 8 <sup>7</sup>/<sub>8</sub>% senior secured notes due 2017, partially offset by the payment of debt issuance costs incurred in connection with such sale. PAETEC applied a portion of the proceeds from the January 2010 sale of the 8 <sup>7</sup>/<sub>8</sub>% senior secured notes to repay \$240.2 million in aggregate principal amount of term loans and \$30.0 million in aggregate principal of revolving loans outstanding under its senior secured credit facilities. Net cash used in financing activities of \$2.5 million for the 2009 quarter was primarily related to repayments on long-term debt and expenditures under PAETEC's stock repurchase program.

*Contractual Obligations.* PAETEC has various contractual obligations and commercial commitments. PAETEC does not have off-balance sheet financing arrangements other than its letters of credit and operating leases.

The following table sets forth PAETEC's future contractual obligations and commercial commitments as of March 31, 2010:

### Contractual Obligations (in thousands)

	Total	Less Than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Long-term debt	\$ 950,000	\$ —	\$ —	\$ —	\$ 950,000
Capital lease obligations	20,596	4,147	12,328	3,937	184
Operating leases	188,923	27,467	58,570	42,016	60,870
Purchase obligations	247,398	100,524	133,457	13,417	—
Other long-term liabilities	58,963	—	17,154	11,915	29,894
Total	\$ 1,465,880	\$ 132,138	\$ 221,509	\$ 71,285	\$ 1,040,948

*Indebtedness.* At March 31, 2010, PAETEC had approximately \$955.0 million of total indebtedness, net of an unamortized discount of \$9.4 million. The overall weighted average annual interest rate, including the debt discount and debt premium but excluding deferred financing costs, was 9.0%. Of this total indebtedness, an aggregate principal amount of \$300.0 million was outstanding under the company's 9.5% senior notes due 2015 and an aggregate principal amount of \$650.0 million was outstanding under the company's 8 <sup>7</sup>/<sub>8</sub>% senior secured notes due 2017.

On January 12, 2010, PAETEC Holding issued and sold \$300.0 million in aggregate principal amount of its 8 <sup>7</sup>/<sub>8</sub>% senior secured notes. Accordingly, immediately following the issuance and sale in January 2010 of the 8 <sup>7</sup>/<sub>8</sub>% senior secured notes, the company had \$650.0 million in aggregate principal amount of the 8 <sup>7</sup>/<sub>8</sub>% senior secured notes outstanding. PAETEC Holding applied a portion of the proceeds from the January 2010 sale of the 8 <sup>7</sup>/<sub>8</sub>% senior secured notes to repay \$240.2 million in aggregate principal amount of term loans and \$30.0 million in aggregate principal of revolving loans outstanding under its senior secured credit facilities.

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Immediately following the sale in January 2010 of the senior secured notes and PAETEC's application of the offering proceeds to the foregoing uses, PAETEC's senior secured credit facilities consisted of the following:

- a term loan credit facility under which no term loans were outstanding and under which PAETEC could obtain incremental term loans, subject to conditions, in an aggregate principal amount of up to approximately \$65.0 million under one or more incremental facilities; and
- a revolving credit facility under which no revolving loans were outstanding and under which PAETEC could obtain from time to time revolving loans of up to an aggregate principal amount of \$50.0 million outstanding at any time.

Under the terms of the total leverage ratio covenant contained in PAETEC's credit agreement for its senior credit facilities, PAETEC's ratio of consolidated debt to consolidated adjusted EBITDA (as defined for purposes of the credit agreement) as of any measurement date will not be permitted to be greater than 5.00:1.00. PAETEC was in compliance with this financial covenant as of March 31, 2010.

See Note 4 to PAETEC's condensed consolidated financial statements appearing elsewhere in this report for additional information regarding the company's indebtedness.

*Stock Repurchase Program.* In 2009, PAETEC Holding's board of directors authorized the repurchase of up to \$25.0 million of PAETEC Holding's outstanding common stock through December 31, 2010, subject to conditions. PAETEC Holding may repurchase shares from time to time, at its discretion, on the open market or in private transactions. The repurchase program does not obligate PAETEC Holding to repurchase any specific number of shares, and may be modified or discontinued at any time. As of March 31, 2010, after taking into account repurchases made under the plan through such date and restrictions under its debt agreements, PAETEC Holding retained the ability to repurchase \$16.2 million of common stock through December 31, 2010.

*Capital and Cash Requirements.* PAETEC expects that it will continue to require significant capital expenditures to maintain and enhance its network and services and to generate planned revenue growth. PAETEC made capital expenditures, principally for the purchase of communications equipment, of approximately \$29.5 million in the 2010 quarter. PAETEC expects to fund all of its 2010 capital expenditures from cash on hand and cash flow from operations. PAETEC plans to make such capital expenditures primarily for the following purposes:

- to continue to acquire and install equipment to enhance and maintain its network;
- to increase penetration of its existing markets;
- to expand its operations into additional geographic markets; and
- to make infrastructure enhancements, principally for its back office systems.

The actual amount and timing of PAETEC's capital requirements may differ materially from its estimates as a result of regulatory, technological and competitive developments in the company's industry. As of March 31, 2010, PAETEC had entered into agreements with vendors to purchase approximately \$14.7 million of equipment and services, of which PAETEC expects \$11.5 million to be delivered and payable in 2010, \$2.1 million in 2011 and \$1.1 million in 2012.

PAETEC may seek to purchase some of its outstanding 9.5% senior notes due 2015 and/or some of its outstanding 8<sup>7/8</sup>% senior secured notes for cash in open market transactions, privately negotiated transactions or otherwise. Such repurchases, if any, will depend on prevailing market conditions and the discount, if any, at which the notes may be purchased, PAETEC's liquidity requirements, contractual restrictions and other factors. The amounts involved in any such purchases may be material.

PAETEC believes that cash on hand and cash flow from operations will provide sufficient cash to enable the company to fund its planned capital expenditures, make scheduled principal and interest payments on its debt, meet its other cash requirements, and maintain compliance with the terms of its financing agreements for at least the next 12 months. After the foregoing period, PAETEC may require additional capital for network enhancements to provide increased capacity to meet expected increased demand for its services. The amount and timing of these additional network enhancements, if any, will depend on the anticipated demand for services, the availability of funds and other factors. The actual amount and timing of PAETEC's future capital requirements may differ materially from the company's estimates depending on the demand for its services and new market developments and opportunities, and on other factors, including those described in Part I, "Item 1A. Risk Factors" in its Annual Report on Form 10-K for its 2009 fiscal year. If PAETEC's plans or assumptions change or prove to be inaccurate, the foregoing sources of funds may prove to be insufficient. In addition, if PAETEC seeks to acquire other businesses or to accelerate the expansion of its business, it may be required to seek additional capital. Additional sources may include equity and debt financing and other financing arrangements, such as vendor financing. In addition, if PAETEC believes it can obtain additional debt financing on advantageous terms, PAETEC may seek such financing at any time, to the extent that market conditions and other factors permit it to do so. The debt financing PAETEC may seek could be in the form of term loans under its senior secured credit facilities or additional debt securities having substantially the same terms as, or different terms from, PAETEC's outstanding senior notes and senior secured notes. Any inability of PAETEC to generate the sufficient funds that it may require or to obtain such funds under reasonable terms could limit its ability to increase its revenue or to operate profitably. PAETEC's ability to raise any required funds is subject to restrictions imposed by covenants contained in its existing debt agreements and could be negatively affected by a continuation of adverse conditions in the credit and capital markets.

### Critical Accounting Policies

PAETEC's condensed consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information and the rules and regulations of the SEC. Preparing consolidated financial statements requires PAETEC to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses. These estimates and assumptions are affected by the application of PAETEC's accounting policies. PAETEC's significant accounting policies are described in the note captioned "Summary of Significant Accounting Policies" in Note 2 to the consolidated financial statements included in PAETEC's Form 10-K for its 2009 fiscal year, and a discussion of PAETEC's critical accounting estimates is provided in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in that report.

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### ***Recent Accounting Pronouncements***

In October 2009, the FASB issued Accounting Standards Update, or "ASU," 2009-13, *Revenue Recognition (Topic 605)*. This ASU provides amendments to the criteria in ASC 605-25 for separating consideration in multiple-deliverable revenue arrangements. It establishes a hierarchy of selling prices to determine the selling price of each specific deliverable, which includes vendor-specific objective evidence (if available), third-party evidence (if vendor-specific evidence is not available), or estimated selling price if neither of the first two is available. This ASU also eliminates the residual method for allocating revenue between the elements of an arrangement and requires that arrangement consideration be allocated at the inception of the arrangement. Finally, this ASU expands the disclosure requirements regarding a vendor's multiple-deliverable revenue arrangements. This ASU is effective for fiscal years beginning on or after June 15, 2010. PAETEC is currently evaluating the impact of this ASU on its financial statements.

In October 2009, the FASB issued ASU 2009-14, *Certain Revenue Arrangements that include Software Elements*. This ASU amends accounting and reporting guidance under ASC 605-985 to exclude from its scope all tangible products containing both software and non-software components that function together to deliver the product's essential functionality. ASU 2009-14 will be effective for fiscal years beginning on or after June 15, 2010. PAETEC is currently evaluating the impact of this ASU on its financial statements.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

PAETEC is exposed to market risks in the normal course of business. PAETEC manages the sensitivity of its results of operations to these risks by maintaining an investment portfolio consisting primarily of short-term, interest-bearing securities and by entering into long-term debt obligations with appropriate pricing and terms. PAETEC does not hold or issue derivative, derivative commodity or other financial instruments for trading purposes. PAETEC does not have any material foreign currency exposure.

PAETEC's major market risk exposure is to changing interest rates associated with borrowings the company used to fund the expansion of its business and to support its acquisition activities. The interest rates that PAETEC is able to obtain on this debt financing depend on market conditions. PAETEC's policy is to manage interest rates through a combination of fixed-rate debt and, from time to time, the use of interest rate swap contracts to manage the company's exposure to fluctuations in interest rates on variable-rate debt. PAETEC repaid all of its variable-rate debt outstanding under its senior secured credit facilities in January 2010 with the proceeds of the offering of \$300.0 million principal amount of PAETEC's 8<sup>7</sup>/8% senior secured notes due 2017, as described in Note 4 to the condensed consolidated financial statements appearing elsewhere in this report.

### **Item 4. Controls and Procedures**

#### ***Evaluation of Disclosure Controls and Procedures***

Our management, with the participation of our Chairman, President and Chief Executive Officer, who is our principal executive officer, and our Executive Vice President and Chief Financial Officer, who is our principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures, as defined in Rule 13a-15 under the Securities Exchange Act of 1934, as of March 31, 2010. Based upon that evaluation, our Chairman, President and Chief Executive Officer and our Executive Vice President and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of March 31, 2010.

#### ***Changes in Internal Control Over Financial Reporting***

During the fiscal period covered by this report, there were no changes in our internal control over financial reporting that materially affected, or that are reasonably likely to materially affect, our internal control over financial reporting.

**PART II**  
**OTHER INFORMATION**

**Item 1. Legal Proceedings**

PAETEC is a party or otherwise subject to various legal proceedings. A description of these proceedings is set forth in the company's Annual Report on Form 10-K for the year ended December 31, 2009 under the caption "Legal Proceedings" in Part I and under the caption "Litigation" in Note 11 to the consolidated financial statements included in that report. For updated information about some of these proceedings, see Note 8 to the condensed consolidated financial statements appearing under Item 1 of Part I of this report. This information, which appears in Note 8 under the caption "Litigation," is incorporated by reference into this Item 1 of Part II of this report and is made a part hereof.

***Proceeding Involving Iowa Department of Revenue***

Certain operating subsidiaries of McLeodUSA Incorporated have protested and appealed various sales and use tax assessments levied by the Iowa Department of Revenue, or "IDOR," with respect to the purchase of certain equipment from 1996 through 2005. These assessments, including estimated interest and penalties, originally totaled approximately \$16.5 million. PAETEC entered into settlement agreements with the IDOR in April 2009 and January 2010, resolving a substantial portion of the disputed assessments. PAETEC recognized a \$7.2 million benefit recorded as a sales and use tax settlement in its consolidated statements of operations and comprehensive (loss) income during the year ended December 31, 2009 as a result of the agreements.

**Item 1A. Risk Factors**

In addition to the other information set forth in this report, the factors discussed in Part I, "Item 1A. Risk Factors" in our Annual Report on Form 10-K for our 2009 fiscal year could materially affect PAETEC's business, financial condition or operating results. The risks described in our Annual Report on Form 10-K are not the only risks facing us. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or operating results.

**Item 6. Exhibits**

The following exhibits are either filed with this Quarterly Report on Form 10-Q or are incorporated herein by reference. Our Securities Exchange Act file number is 000-52486.

<b>Exhibit Number</b>	<b>Description</b>
*4.1	Fourth Supplemental Indenture, dated as of April 23, 2010, by and among PAETEC Holding Corp. ("PAETEC Holding"), the New Guarantors named therein and The Bank of New York Mellon, as Trustee, with respect to senior debt securities.
4.2.1	First Supplemental Indenture, dated as of January 12, 2010, between PAETEC Holding Corp. and The Bank of New York Mellon, as Trustee, with respect to senior secured debt securities. Filed as Exhibit 4.1 to the Current Report on Form 8-K of PAETEC Holding filed on January 12, 2010 (the "January 12, 2010 Form 8-K") and incorporated herein by reference.
4.2.2	Officers' Certificate of PAETEC Holding, dated January 12, 2010, relating to the issuance on January 12, 2010 of senior secured debt securities. Filed as Exhibit 4.3 to the January 12, 2010 Form 8-K and incorporated herein by reference.
4.2.3	Second Supplemental Indenture, dated as of March 5, 2010, by and among PAETEC Holding, the New Guarantor named therein and The Bank of New York Mellon, as Trustee, with respect to senior secured debt securities. Filed as Exhibit 4.6.4 to the Annual Report on Form 10-K of PAETEC Holding filed on March 12, 2010 and incorporated herein by reference.
*4.2.4	Third Supplemental Indenture, dated as of April 23, 2010, by and among PAETEC Holding, the New Guarantor named therein and The Bank of New York Mellon, as Trustee, with respect to senior secured debt securities.
10.1	Registration Rights Agreement, dated as of January 12, 2010, by and among PAETEC Holding, the subsidiaries of PAETEC Holding listed on the signature pages thereto, Banc of America Securities LLC, Deutsche Bank Securities Inc., Credit Suisse Securities (USA) LLC and Wells Fargo Securities, LLC. Filed as Exhibit 4.2 to the January 12, 2010 Form 8-K and incorporated herein by reference.
10.2	Third Amendment to the Credit Agreement, dated as of January 12, 2010, among PAETEC Holding, as Borrower, the lenders party thereto and Deutsche Bank Trust Company Americas, as Administrative Agent. Filed as Exhibit 10.1 to the January 12, 2010 Form 8-K and incorporated herein by reference.
*10.3	Fourth Amendment to the Credit Agreement, dated as of April 15, 2010, among PAETEC Holding, as Borrower, the lenders party thereto and Deutsche Bank Trust Company Americas, as Administrative Agent.
*10.4	Form of Executive Confidentiality, Non-Solicitation, Non-Competition and Severance Agreement between PAETEC Holding and Arunas A. Chesonis.
*10.5	Form of Executive Vice President Confidentiality, Non-Solicitation, Non-Competition and Severance Agreement between PAETEC Holding and certain Executive Vice Presidents of PAETEC Holding, including Mario DeRiggi and Robert D. Moore, Jr.

\*10.6 Form of Senior Vice President Confidentiality, Non-Solicitation, Non-Competition and Severance Agreement between PAETEC Holding and certain Senior Vice Presidents of PAETEC Holding, including Mary K. O'Connell, Algimantas K. Chesonis and Laurie L. Zaucha.

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## [Table of Contents](#)

<b>Exhibit Number</b>	<b>Description</b>
*31.1	Certification of Chief Executive Officer of PAETEC Holding pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934.
*31.2	Certification of Executive Vice President and Chief Financial Officer of PAETEC Holding pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934.
*32	Certifications pursuant to Rule 13a-14(b) or Rule 15d-14(b) under the Securities Exchange Act of 1934 and 18 U.S.C. 1350.

\* Filed herewith.

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

PAETEC Holding Corp.  
(Registrant)

Dated: May 7, 2010

By: /s/ KEITH M. WILSON  
**Keith M. Wilson**  
**Executive Vice President and Chief Financial Officer**  
**(Duly Authorized Officer and Principal Financial Officer)**



## Exhibit Index

Exhibit Number	Description
*4.1	Fourth Supplemental Indenture, dated as of April 23, 2010, by and among PAETEC Holding Corp. ("PAETEC Holding"), the New Guarantors named therein and The Bank of New York Mellon, as Trustee, with respect to senior debt securities.
4.2.1	First Supplemental Indenture, dated as of January 12, 2010, between PAETEC Holding Corp. and The Bank of New York Mellon, as Trustee, with respect to senior secured debt securities. Filed as Exhibit 4.1 to the Current Report on Form 8-K of PAETEC Holding filed on January 12, 2010 (the "January 12, 2010 Form 8-K") and incorporated herein by reference.
4.2.2	Officers' Certificate of PAETEC Holding, dated January 12, 2010, relating to the issuance on January 12, 2010 of senior secured debt securities. Filed as Exhibit 4.3 to the January 12, 2010 Form 8-K and incorporated herein by reference.
4.2.3	Second Supplemental Indenture, dated as of March 5, 2010, by and among PAETEC Holding, the New Guarantor named therein and The Bank of New York Mellon, as Trustee, with respect to senior secured debt securities. Filed as Exhibit 4.6.4 to the Annual Report on Form 10-K of PAETEC Holding filed on March 12, 2010 and incorporated herein by reference.
*4.2.4	Third Supplemental Indenture, dated as of April 23, 2010, by and among PAETEC Holding, the New Guarantor named therein and The Bank of New York Mellon, as Trustee, with respect to senior secured debt securities.
10.1	Registration Rights Agreement, dated as of January 12, 2010, by and among PAETEC Holding, the subsidiaries of PAETEC Holding listed on the signature pages thereto, Banc of America Securities LLC, Deutsche Bank Securities Inc., Credit Suisse Securities (USA) LLC and Wells Fargo Securities, LLC. Filed as Exhibit 4.2 to the January 12, 2010 Form 8-K and incorporated herein by reference.
10.2	Third Amendment to the Credit Agreement, dated as of January 12, 2010, among PAETEC Holding, as Borrower, the lenders party thereto and Deutsche Bank Trust Company Americas, as Administrative Agent. Filed as Exhibit 10.1 to the January 12, 2010 Form 8-K and incorporated herein by reference.
*10.3	Fourth Amendment to the Credit Agreement, dated as of April 15, 2010, among PAETEC Holding, as Borrower, the lenders party thereto and Deutsche Bank Trust Company Americas, as Administrative Agent.
*10.4	Form of Executive Confidentiality, Non-Solicitation, Non-Competition and Severance Agreement between PAETEC Holding and Arunas A. Chesonis.
*10.5	Form of Executive Vice President Confidentiality, Non-Solicitation, Non-Competition and Severance Agreement between PAETEC Holding and certain Executive Vice Presidents of PAETEC Holding, including Mario DeRiggi and Robert D. Moore, Jr.
*10.6	Form of Senior Vice President Confidentiality, Non-Solicitation, Non-Competition and Severance Agreement between PAETEC Holding and certain Senior Vice Presidents of PAETEC Holding, including Mary K. O'Connell, Algimantas K. Chesonis and Laurie L. Zaucha.
*31.1	Certification of Chief Executive Officer of PAETEC Holding pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934.
*31.2	Certification of Executive Vice President and Chief Financial Officer of PAETEC Holding pursuant to Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934.
*32	Certifications pursuant to Rule 13a-14(b) or Rule 15d-14(b) under the Securities Exchange Act of 1934 and 18 U.S.C. 1350.

\* Filed herewith.

## FOURTH SUPPLEMENTAL INDENTURE

FOURTH SUPPLEMENTAL INDENTURE (this “Supplemental Indenture”) dated as of April 23, 2010, among PAETEC Holding Corp., a Delaware corporation (the “Issuer”), PAETEC Realty LLC, a New York limited liability company (“PAETEC Realty”), and U.S. Energy Partners LLC, a New York limited liability company (“U.S. Energy”), each of PAETEC Realty and U.S. Energy a subsidiary of the Issuer (collectively, the “New Guarantors”), and The Bank of New York Mellon (formerly known as The Bank of New York), as trustee under the indenture referred to below (the “Trustee”).

## RECITALS

**WHEREAS**, the Issuer and certain of its Subsidiary Guarantors have heretofore executed and delivered to the Trustee an Indenture, dated as of July 10, 2007 (as supplemented by the First Supplemental Indenture, the Second Supplemental Indenture and the Third Supplemental Indenture referred to below, the “Indenture”), providing for an initial issuance of an aggregate principal amount of \$300,000,000 of the Issuer’s 9.5% Senior Notes due 2015 (the “Notes”) and Subsidiary Guarantees of the Notes by the Subsidiary Guarantors, and the Issuer and other Subsidiary Guarantors have heretofore executed and delivered to the Trustee a First Supplemental Indenture, dated as of September 25, 2007 (the “First Supplemental Indenture”), a Second Supplemental Indenture, dated as of February 8, 2008 (the “Second Supplemental Indenture”), and a Third Supplemental Indenture, dated as of December 18, 2009 (the “Third Supplemental Indenture”), each providing for Subsidiary Guarantees of the Notes by the Subsidiaries party thereto;

**WHEREAS**, Sections 4.19 and 10.03 of the Indenture provide that the Issuer is required to use commercially reasonable efforts to cause its current and future Restricted Subsidiaries that are eligible to be Subsidiary Guarantors under the definition thereof in the Indenture to execute and deliver to the Trustee a supplemental indenture pursuant to which such Restricted Subsidiaries shall, jointly and severally with the other Subsidiary Guarantors, fully and unconditionally guarantee the payment and performance of the Notes and the other obligations set forth in Section 10.01 of the Indenture, subject to Article Ten of the Indenture;

**WHEREAS**, the New Guarantors are Restricted Subsidiaries and are eligible to guarantee the Notes;

**WHEREAS**, this Supplemental Indenture executed pursuant to Sections 4.19 and 10.03 of the Indenture shall evidence the Subsidiary Guarantee of the New Guarantors set forth in Section 10.01 of the Indenture;

**WHEREAS**, pursuant to Section 4.19, Section 9.01 and Section 10.03 of the Indenture, the Trustee, the Issuer and the New Guarantors are authorized to execute and deliver this Supplemental Indenture and the New Guarantors are authorized to execute and deliver the Subsidiary Guarantees;

**NOW THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. Capitalized Terms. Capitalized terms used in this Supplemental Indenture (including the recitals hereto) without definition shall have the meanings set forth in the Indenture.
2. Agreement to Guarantee. Subject to Article Ten of the Indenture, each New Guarantor hereby agrees, jointly and severally with the other Subsidiary Guarantors, to guarantee fully and

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unconditionally to each Holder of a Note and to the Trustee and its successors and assigns the payment and performance of the Notes and the other obligations set forth in Section 10.01 of the Indenture and to be bound by all other applicable provisions of the Indenture and the Notes. Each New Guarantor acknowledges and agrees, pursuant to Section 10.03 of the Indenture, that, upon its execution and delivery of this Supplemental Indenture, such New Guarantor shall be deemed to be a Subsidiary Guarantor for all purposes of the Indenture (including, without limitation, for purposes of Article Ten thereof).

3. Ratification of Indenture; Supplemental Indenture Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

4. Trustee's Disclaimer. The Trustee makes no representation or warranty as to the validity or sufficiency of this Supplemental Indenture. The recitals and the statements herein are deemed to be those of the Issuer and the New Guarantors and not of the Trustee.

5. Governing Law. **THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE ISSUER, THE NEW GUARANTORS AND THE TRUSTEE AGREE TO SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECOND SUPPLEMENTAL INDENTURE.**

6. Successors. All agreements of the New Guarantors in this Supplemental Indenture shall bind its successors.

7. Counterparts. This Supplemental Indenture may be executed in two or more counterparts, all of which shall be considered one and the same agreement.

8. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction thereof.

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IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first written above.

**The New Guarantors**

**PAETEC Realty LLC**

By: /s/ Mary K. O'Connell  
Name: Mary K. O'Connell  
Title: Senior Vice President, General Counsel and  
Secretary

**U.S. Energy Partners LLC**

By: /s/ Mary K. O'Connell  
Name: Mary K. O'Connell  
Title: Senior Vice President, General Counsel and  
Secretary

**The Issuer**

**PAETEC Holding Corp.**

By: /s/ Mary K. O'Connell  
Name: Mary K. O'Connell  
Title: Senior Vice President, General Counsel and  
Secretary

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**The Trustee**

The Bank of New York Mellon

By: /s/ Thomas J. Provenzano

Name: Thomas J. Provenzano

Title: Vice President

## THIRD SUPPLEMENTAL INDENTURE

THIRD SUPPLEMENTAL INDENTURE (this “Supplemental Indenture”) dated as of April 23, 2010, among PAETEC Holding Corp., a Delaware corporation (the “Issuer”) and U.S. Energy Partners LLC, a New York limited liability company (the “New Guarantor”) and a subsidiary of the Issuer, and The Bank of New York Mellon, as trustee under the indenture referred to below (the “Trustee”).

## RECITALS

**WHEREAS**, the Issuer and certain of its Subsidiary Guarantors have heretofore executed and delivered to the Trustee an Indenture, dated as of June 29, 2009 (as supplemented by that certain First Supplemental Indenture, dated as of January 12, 2010, and that certain Second Supplemental Indenture, dated as of March 5, 2010, the “Indenture”), providing for an initial issuance of an aggregate principal amount of \$350,000,000 of the Issuer’s 8 <sup>7</sup>/<sub>8</sub>% Senior Secured Notes due 2017 (the “Notes”) on June 29, 2009 and an additional issuance of an aggregate principal amount of \$300,000,000 of the Notes on January 12, 2010 and Subsidiary Guarantees of the Notes by the Subsidiary Guarantors;

**WHEREAS**, Sections 4.19 and 10.03 of the Indenture provide that the Issuer is required to use commercially reasonable efforts to cause its current and future Restricted Subsidiaries that are eligible to be Subsidiary Guarantors under the definition thereof in the Indenture to execute and deliver to the Trustee a supplemental indenture pursuant to which such Restricted Subsidiaries shall, jointly and severally with the other Subsidiary Guarantors, fully and unconditionally guarantee the payment and performance of the Notes and the other obligations set forth in Section 10.01 of the Indenture, subject to Article Ten of the Indenture;

**WHEREAS**, the New Guarantor is a Restricted Subsidiary and is eligible to guarantee the Notes;

**WHEREAS**, this Supplemental Indenture executed pursuant to Sections 4.19 and 10.03 of the Indenture shall evidence the Subsidiary Guarantee of the New Guarantor set forth in Section 10.01 of the Indenture;

**WHEREAS**, pursuant to Section 4.19, Section 9.01 and Section 10.03 of the Indenture, the Trustee, the Issuer and the New Guarantor are authorized to execute and deliver this Supplemental Indenture and the New Guarantor is authorized to execute and deliver the Subsidiary Guarantee;

**NOW THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. Capitalized Terms. Capitalized terms used in this Supplemental Indenture (including the recitals hereto) without definition shall have the meanings set forth in the Indenture.

2. Agreement to Guarantee. Subject to Article Ten of the Indenture, the New Guarantor hereby agrees, jointly and severally with the other Subsidiary Guarantors, to guarantee fully and unconditionally to each Holder of a Note and to the Trustee and its successors and assigns the payment and performance of the Notes and the other obligations set forth in Section 10.01 of the Indenture and to be bound by all other applicable provisions of the Indenture and the Notes. The New Guarantor acknowledges and agrees, pursuant to Section 10.03 of the Indenture, that, upon its execution and delivery of this Supplemental Indenture, the New Guarantor shall be deemed to be a Subsidiary Guarantor for all purposes of the Indenture (including, without limitation, for purposes of Article Ten thereof).

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3. Ratification of Indenture; Supplemental Indenture Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

4. Trustee's Disclaimer. The Trustee makes no representation or warranty as to the validity or sufficiency of this Supplemental Indenture. The recitals and the statements herein are deemed to be those of the Issuer and the New Guarantor and not of the Trustee.

5. Governing Law. **THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE ISSUER, THE NEW GUARANTOR AND THE TRUSTEE AGREE TO SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECOND SUPPLEMENTAL INDENTURE.**

6. Successors. All agreements of the New Guarantor in this Supplemental Indenture shall bind its successors.

7. Counterparts. This Supplemental Indenture may be executed in two or more counterparts, all of which shall be considered one and the same agreement.

8. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction thereof.

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IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first written above.

**The New Guarantor**

**U.S. Energy Partners LLC**

By: /s/ Mary K. O'Connell  
Name: Mary K. O'Connell  
Title: Senior Vice President, General Counsel and  
Secretary

**The Issuer**

**PAETEC Holding Corp.**

By: /s/ Mary K. O'Connell  
Name: Mary K. O'Connell  
Title: Senior Vice President, General Counsel and  
Secretary



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**The Trustee**

The Bank of New York Mellon

By: /s/ Thomas J. Provenzano

Name: Thomas J. Provenzano

Title: Vice President

FOURTH AMENDMENT TO THE CREDIT AGREEMENT

FOURTH AMENDMENT, dated as of April 15, 2010 (this “Fourth Amendment”), to the Credit Agreement, dated as of February 28, 2007, as amended as of June 27, 2007, May 29, 2009 and January 12, 2010 (as so amended and as further amended, amended and restated, modified or supplemented from time to time, the “Credit Agreement”), among PAETEC Holding Corp., a Delaware corporation (the “Borrower”), the lenders party thereto from time to time (the “Lenders”) and Deutsche Bank Trust Company Americas (“DBTCA”), as administrative agent (in such capacity, the “Administrative Agent”).

W I T N E S S E T H :

WHEREAS, pursuant to the Credit Agreement, the Lenders have extended credit to the Borrower on the terms and conditions set forth therein; and

WHEREAS, the Required Lenders have consented to amend certain provisions of the Credit Agreement on the terms and conditions contained herein.

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE 1

Definitions

Section 1.1 Defined Terms. Terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement unless otherwise defined herein or the context otherwise requires.

ARTICLE 2

Amendments to Credit Agreement

Section 2.1 Definitions. Section 1.01 of the Credit Agreement is hereby amended by inserting in the appropriate alphabetical order the following new definitions:

“Energy Contract Collateral” shall mean the following, wherever located, whether now owned, hereafter acquired or created, in each case, to the extent constituting collateral that has been pledged as security under any Energy Contract: (i) all amounts and/or accounts owing from customers of U.S. Energy to U.S. Energy and all associated charges, including, without limitation, unbilled accounts receivable, (ii) deposits by U.S. Energy that are required to be made by it pursuant to an Energy Contract to secure its performance under any Energy Contract in an aggregate amount not to exceed \$5,000,000 at any time, (iii) all amounts owing and all amounts to be owing from any Energy Contract

Counterparty to U.S. Energy and (iv) all products and proceeds of clauses (i), (ii) and (iii) above.

“Energy Contract Counterparty” shall have the meaning provided in the definition of Energy Contracts contained herein.

“Energy Contracts” shall mean, collectively, any and all agreements related to the provision of billing services to U.S. Energy and/or the purchase of accounts receivable from U.S. Energy by a third party billing service provider and/or purchaser of accounts receivable (any such third party and its successors and assigns being referred to herein as an “Energy Contract Counterparty”), in each case, entered into in the ordinary course of business of U.S. Energy and on a basis consistent with past practices.

“Fourth Amendment” shall mean the Fourth Amendment to this Agreement, dated as of April 15, 2010.

“Fourth Amendment Effective Date” shall have the meaning provided in the Fourth Amendment.

“U.S. Energy” shall mean U.S. Energy Partners LLC, a New York limited liability company, and a Wholly-Owned Domestic Subsidiary of the Borrower, and each of its Wholly-Owned Domestic Subsidiaries so long as the business being conducted by such Wholly-Owned Domestic Subsidiaries is limited substantially to the business conducted by U.S. Energy on the Fourth Amendment Effective Date.

Section 2.2 Additional Security; Further Assurances; etc. Section 9.12(a) of the Credit Agreement is hereby amended by deleting the text “(except that the security interest and mortgage lien created in such Real Property may be subject to Permitted Encumbrances which may be superior)” appearing in said Section.

Section 2.3 Liens. Section 10.01 of the Credit Agreement is hereby amended by:

(i) deleting clause (xxvi) of said Section in its entirety and inserting the following new clause in lieu thereof:

“(xxvi) additional Liens of the Borrower or any Subsidiary of the Borrower not otherwise permitted by this Section 10.01 that do not secure obligations in excess of \$10,000,000 in the aggregate for all such Liens at any time;”;

(ii) deleting the word “and” appearing at the end of clause (xxvii) of said Section;

(iii) deleting the period appearing at the end of clause (xxviii) of said Section and inserting the text “; and” in lieu thereof;

(iv) inserting the following new clause (xxix) immediately following clause (xxviii) of said Section:

“(xxix) Liens created by or pursuant to Energy Contracts with respect to Energy Contract Collateral”; and

(v) deleting the text “and (xx)” appearing in the last sentence of said Section and inserting the text “, (xx) and (xxix) in lieu thereof.

Section 2.4 Consolidation, Merger, Purchase or Sale of Assets, etc. Section 10.02 of the Credit Agreement is hereby amended by inserting the following text at the end of clause (vi) thereof:

“; provided, however, that U.S. Energy also may sell or discount its accounts receivable to an Energy Contract Counterparty pursuant to Energy Contracts so long as (x) the only recourse nature thereunder is in respect of certain charge-backs, indemnification obligations and credits against future sales of accounts receivable thereunder to the extent provided in such Energy Contracts and (y) no more than \$4,500,000 of such accounts receivable in the aggregate may be sold in any calendar month pursuant to Energy Contracts”.

Section 2.5 Indebtedness. Section 10.04(iv) of the Credit Agreement is hereby amended by deleting the text “25,000,000” appearing in said Section and inserting the text “\$50,000,000” in lieu thereof.

Section 2.6 Business; etc. Section 10.12 of the Credit Agreement is hereby amended by inserting the following new clause (d) at the end of said Section:

“(d) Notwithstanding anything to the contrary contained in this Agreement, the Borrower shall not permit U.S. Energy to conduct, transact or otherwise engage in any substantial business or operations other than the business and operations that U.S. Energy engaged in on the Fourth Amendment Effective Date.”

### ARTICLE 3

#### Miscellaneous

Section 3.1 Conditions to Effectiveness. This Fourth Amendment shall become effective on the date (the “Fourth Amendment Effective Date”) on which:

(a) Fourth Amendment. The Administrative Agent shall have executed and delivered this Fourth Amendment and the Administrative Agent shall have received this Fourth Amendment, executed and delivered by a duly authorized officer of each of the Borrower and the Required Lenders.

(b) Fees and Expenses. The Borrower shall have paid to White & Case LLP all reasonable fees, costs and expenses reflected in the invoice dated April 14, 2010.

Section 3.2 Representation and Warranties. After giving effect to the amendments contained herein, on the Fourth Amendment Effective Date, the Borrower hereby (i) represents and warrants that no Default or Event of Default has occurred and is continuing under the Credit Agreement and (ii) confirms that the representations and warranties set forth in Section 8 of the Credit Agreement are true and correct in all material respects on and as of the Fourth Amendment Effective Date with the same effect as though made on and as of the Fourth Amendment Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties were true and correct in all material respects as of such earlier date).

Section 3.3 Continuing Effect; No Other Waivers or Amendments. This Fourth Amendment shall not constitute an amendment or waiver of or consent to any provision of the Credit Agreement and the other Credit Documents except as expressly stated herein and shall not be construed as an amendment, waiver or consent to any action on the part of the Borrower or any Subsidiary of the Borrower that would require an amendment, waiver or consent of the Administrative Agent or the Lenders except as expressly stated herein. Except as expressly amended hereby, the provisions of the Credit Agreement and the other Credit Documents are and shall remain in full force and effect in accordance with their terms.

Section 3.4 Counterparts. This Fourth Amendment may be executed in any number of separate counterparts by the parties hereto (including by telecopy or via electronic mail), each of which counterparts when so executed shall be an original, but all the counterparts shall together constitute one and the same instrument.

Section 3.5 References to Credit Agreement. From and after the Fourth Amendment Effective Date, all references in the Credit Agreement and each of the other Credit Documents to the Credit Agreement shall be deemed to be references to the Credit Agreement, as modified hereby.

Section 3.6 Payment of Fees and Expenses. The Borrower agrees to pay or reimburse the Administrative Agent for all of its reasonable out-of-pocket costs and reasonable expenses incurred in connection with this Fourth Amendment, any other documents prepared in connection herewith and the transactions contemplated hereby, including, without limitation, the reasonable fees, charges and disbursements of counsel to the Administrative Agent.

Section 3.7 GOVERNING LAW. THIS FOURTH AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS FOURTH AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

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IN WITNESS WHEREOF, the parties hereto have caused this Fourth Amendment to be executed and delivered by their respective duly authorized officers as of the date first above written.

PAETEC HOLDING CORP.

By: /s/ Keith M. Wilson

Name: Keith M. Wilson

Title: EVP and CFO

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DEUTSCHE BANK TRUST COMPANY  
AMERICAS, as Administrative Agent  
and as a Lender

By: /s/ Anca Trifan  
Name: Anca Trifan  
Title: Managing Director

By: /s/ Omayra Laucella  
Name: Omayra Laucella  
Title: Vice President

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SIGNATURE PAGE TO THE FOURTH AMENDMENT TO  
CREDIT AGREEMENT, DATED AS OF THE DATE FIRST  
REFERENCED ABOVE, AMONG PAETEC HOLDING  
CORP., VARIOUS LENDERS AND DEUTSCHE BANK  
TRUST COMPANY AMERICAS, AS ADMINISTRATIVE  
AGENT

NAME OF INSTITUTION:

CIT Bank

By:           /s/ Benjamin Haslam          

Name: Benjamin Haslam

Title: Authorized Signatory



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SIGNATURE PAGE TO THE FOURTH AMENDMENT TO  
CREDIT AGREEMENT, DATED AS OF THE DATE FIRST  
REFERENCED ABOVE, AMONG PAETEC HOLDING  
CORP., VARIOUS LENDERS AND DEUTSCHE BANK  
TRUST COMPANY AMERICAS, AS ADMINISTRATIVE  
AGENT

NAME OF INSTITUTION:

MANUFACTURERS AND TRADERS TRUST COMPANY

By:	<u>/s/ Jon M. Fogle</u>
Name:	Jon M. Fogle
Title:	Vice President

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SIGNATURE PAGE TO THE FOURTH AMENDMENT TO  
CREDIT AGREEMENT, DATED AS OF THE DATE FIRST  
REFERENCED ABOVE, AMONG PAETEC HOLDING  
CORP., VARIOUS LENDERS AND DEUTSCHE BANK  
TRUST COMPANY AMERICAS, AS ADMINISTRATIVE  
AGENT

NAME OF INSTITUTION:

Merrill Lynch Capital Corporation

By:                     /s/ Carol Braico                    

Name: Carol Braico

Title: Vice President

Wells Fargo Bank, N.A., successor-by-merger to Wachovia Bank, National Association:

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**EXECUTIVE CONFIDENTIALITY, NON-SOLICITATION,  
NON-COMPETITION AND SEVERANCE AGREEMENT**

THIS EXECUTIVE CONFIDENTIALITY, NON-SOLICITATION, NON-COMPETITION AND SEVERANCE AGREEMENT (together with the annexes and exhibit attached hereto, this “Agreement”) is entered into as of the date set forth on the signature page hereto between PAETEC Holding Corp., a Delaware corporation (“PAETEC Holding”), and (“you”).

WHEREAS, the Company (as defined herein) has developed and expects to continue to develop confidential and proprietary materials and highly sensitive information of significant value, which you recognize must be carefully protected as set forth below for the Company to be successful;

NOW, THEREFORE, to induce the Company to continue to employ you, and in consideration of your continued employment by the Company and for other good and valuable consideration, the receipt and sufficiency of which you hereby acknowledge, PAETEC Holding and you hereby agree, intending to be legally bound, as follows:

**1. Defined Terms**

For purposes of this Agreement, the following capitalized terms have the meanings ascribed to such terms in this Section 1:

“**Affiliate**” shall have the meaning ascribed to such term in Rule 12b-2 promulgated under the Exchange Act.

“**Board**” shall mean the board of directors of PAETEC Holding.

“**Cause**” shall mean termination of your employment with the Company due to any of the following: (a) your material failure or refusal to perform the duties assigned to you, *provided* that the Company gives you a written notice of your failure or refusal to perform such duties and 20 days to remedy such failure or refusal, and *provided, further*, that such duties are not materially inconsistent with those of other individuals who report directly to the officer of the Company to whom you directly report (or materially inconsistent with those of other individuals reporting directly to the Board, if you are the Chief Executive Officer of PAETEC Holding); (b) your refusal to follow the reasonable directives of the Board, the Chief Executive Officer or the other officer to whom you directly report, *provided* that the Company gives you a written

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notice of your refusal to perform such directives and 20 days to remedy such refusal, and *provided, further*, that such directives are not materially inconsistent with those of other individuals who report directly to the officer of the Company to whom you directly report (or the Board, if you are the Chief Executive Officer of PAETEC Holding); or (c) your conviction of a felony.

**“Change of Control Transaction”** shall mean any of the following:

- (a) the dissolution or liquidation of PAETEC Holding;
- (b) a merger, consolidation, reorganization or similar transaction involving PAETEC Holding (i) in which PAETEC Holding is not the surviving corporation or other surviving Person or (ii) which results in PAETEC Holding becoming the wholly-owned subsidiary of another corporation or other Person (any transaction of the type specified in this clause (ii), a “Parent Transaction”), unless the Existing Stockholders beneficially own (within the meaning of Rule 13d-3 promulgated under the Exchange Act) in the aggregate immediately following the consummation of such transaction more than 50% of the combined voting power of all classes of outstanding Voting Securities of the successor to PAETEC Holding (in the case of a transaction referred to in clause (i) above) or of the corporation or other Person whose Voting Securities are issued to the Existing Stockholders in such transaction (in the case of a transaction referred to in clause (i) or (ii) above);
- (c) a sale of all or substantially all of the assets of PAETEC Holding to another corporation or other Person, as determined in accordance with the applicable law of the State of Delaware;
- (d) any other transaction (including a merger, consolidation, reorganization or similar transaction) that results in any corporation or other Person, other than the Arunas A. Chesonis and his controlled Affiliates, beneficially owning (within the meaning of Rule 13d-3 promulgated under the Exchange Act) immediately following the consummation of such transaction more than 50% of the combined voting power of all classes of outstanding Voting Securities of (i) the corporation (including, to the extent applicable, PAETEC Holding) or other Person whose Voting Securities are issued to the Existing Stockholders in such transaction or (ii) if no such issuance is made in such transaction, PAETEC Holding;  
or

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- (e) the Incumbent Board Members ceasing for any reason to constitute (i) at any time prior to the consummation of a Parent Transaction, a majority of the Board or a majority of the board of directors, board of managers or other governing body of any successor to PAETEC Holding or (ii) at any time following the consummation of a Parent Transaction, a majority of the board of directors, board of managers or other governing body of the corporation or other Person whose Voting Securities are issued to the Existing Stockholders in such transaction; *provided, however*, that any individual becoming a member of the Board or of such board of directors, board of managers or other governing body, as the case may be, subsequent to the date of this Agreement whose appointment or nomination for election was approved by a vote of at least a majority of the Incumbent Board Members shall be deemed to be an Incumbent Board Member for purposes of this clause (e), but excluding, for such purposes, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors (or managers or other members of any such governing body) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board or such board of directors, board of managers or other governing body, as the case may be.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, as in effect on the date hereof or as hereafter amended.

“**Company**” shall mean (a) collectively, PAETEC Holding and its Subsidiaries, or (b) when express reference in this Agreement is made to your employment with the Company or when reference in this Agreement is made to any notice or other communication you are required or permitted to provide hereunder, PAETEC Holding, if you are employed by PAETEC Holding, or any Subsidiary of PAETEC Holding, if you are employed by such Subsidiary, and shall include the successors and assigns of PAETEC Holding and each Subsidiary.

“**Company’s Business**” shall mean the businesses in which PAETEC Holding and its Subsidiaries engage or plan to engage (even if they have not yet begun to engage in such businesses) at any time during the term of your employment with the Company, which businesses shall include research, development, manufacture, sale,

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resale and/or licensing of products and services related to communications, integrated communications, long-distance services, Internet access, eCommerce, hardware and software (whether owned or licensed by the Company), wireless networking and wireless last mile services, and data services, on a wholesale, resale and/or retail basis, including local, domestic, and international long-distance services, local exchange services, IP/ISP services, high-speed Internet access, MPLS services, DSL services, eCommerce, web hosting, ASP services, data networking, systems integration services, telecommunications hardware manufacturing and sale, internet telephony (VOIP) equipment and services, telecommunications expense management software and managed services, and data communications services.

**“Disability”** shall mean your “permanent and total disability” within the meaning of Section 22(e)(3) of the Code.

**“Exchange Act”** shall mean the Securities Exchange Act of 1934, as amended, as in effect on the date hereof or as hereafter amended.

**“Existing Stockholders”** shall mean, with respect to any transaction, all holders of all classes of Voting Securities of PAETEC Holding as of the time immediately preceding the consummation of such transaction.

**“Good Reason”** shall mean termination of your employment with the Company due to any of the following: (a) your assignment without your consent to a position, responsibilities, or duties of a materially lesser status or degree of responsibility than your position, responsibilities, or duties as of the date of this Agreement; (b) any action by the Company to reduce your base salary by a material amount at any time; (c) any action by the Company to reduce your “target” annual bonus opportunity (as opposed to your minimum or maximum annual bonus opportunity), expressed as a percentage of your annual base salary, by a material amount at any time; or (d) a requirement by the Company that you be based anywhere other than within 50 miles of your current location without your consent; *provided, however*, you must give written notice to the Company within 90 days of the occurrence of the condition that is the basis for such Good Reason; *provided, further*, that, if the basis for such Good Reason is correctible and the Company has corrected the basis for such Good Reason within 30 days after receipt of such notice, you may not then terminate your employment for Good Reason with respect to the matters addressed in such notice, and therefore your notice of termination with respect to such basis for Good Reason shall automatically become null and void.

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**“Incumbent Board Members”** shall mean the individuals who, as of the date of this Agreement, constitute the Board.

**“Person”** shall mean an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

**“Subsidiary”** shall mean any corporation, partnership, limited liability company, association or other business entity of which more than 50% of the voting power of the outstanding Voting Securities is owned, directly or indirectly, by PAETEC Holding and one or more other Subsidiaries of PAETEC Holding.

**“Voting Securities”** shall mean, with respect to any Person, capital stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

## **2. Confidentiality**

(a) You acknowledge that you have been and shall be provided access to the Company Confidential Information and occupy and shall occupy a position of trust and confidence with respect to the Company’s affairs and business. For purposes of this Agreement, “Company Confidential Information” shall have the meaning ascribed to such term on **Annex A-1** attached hereto and made a part hereof.

(b) You acknowledge and agree that: (i) during your employment with the Company, you shall have access to and become acquainted with the Company Confidential Information and materials, including its trade secrets, and shall occupy a position of trust and confidence with respect to the Company’s affairs, business and customer goodwill, and the Company Confidential Information; (ii) the interests afforded protection by this Agreement are the Company’s legitimate business interests, deserving of protection; and (iii) the Company would not have entered into or continued its employment relationship with you without your execution of this Agreement. You agree to take the steps set forth on **Annex A-2** attached hereto and made a part hereof to preserve the confidential and proprietary nature of the Company Confidential Information and materials and to preserve the Company’s goodwill.



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### 3. Non-Competition and Non-Solicitation

(a) Unless the following covenants are waived in whole or in part by the Company in accordance with Section 7, for a period of two years after the effective date of termination of your employment with the Company (the “Termination Date”) (irrespective of the reason for, or manner of, such termination), you shall not, directly or indirectly:

- (i) solicit, recruit or hire, or in any manner assist in the soliciting, recruitment or hiring of (A) any of the employees of PAETEC Holding or any Subsidiary or any individuals who were employed by PAETEC Holding or any Subsidiary within 12 months before the Termination Date, or (B) any of the sales agents or independent sales agents of PAETEC Holding or any Subsidiary, or any individual or Person that was a sales agent or independent sales agent of PAETEC Holding or any Subsidiary within 12 months before the Termination Date;
- (ii) individually or as an officer, director, employee, shareholder or equity owner (other than as a shareholder or other equity owner of less than 1% of the outstanding capital stock of a publicly traded company), consultant, contractor, partner, joint venturer, agent, manager, or other representative, work for, become employed by or perform services for any corporation or other Person that is competitive with the Company’s Business or that would divert business from PAETEC Holding or any Subsidiary in any geographical area in which PAETEC Holding or any Subsidiary is then conducting operations (such competitive corporation or other Person, an “Other Enterprise”), provided that you shall not be restricted from working for, becoming employed by or performing services for any Other Enterprise, even if another division, subsidiary or Affiliate of such Other Enterprise is competitive with the Company’s Business or would divert business from PAETEC Holding or any Subsidiary, so long as you do not perform any services for such division, subsidiary or Affiliate, and provided, further, that you shall not be restricted under this Section 3(b)(ii) from competing with any business of PAETEC Holding or any Subsidiary if you did not provide any services to such business of PAETEC Holding or such Subsidiary or did not possess or have knowledge of Company Confidential Information within the 24-month period before the Termination Date;

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- (iii) solicit on behalf of any Other Enterprise, or accept on behalf of any Other Enterprise, business from any individual, business or organization that was known by you to be a customer of PAETEC Holding or any Subsidiary, or identified by PAETEC Holding or any Subsidiary as a prospective customer of PAETEC Holding or such Subsidiary, in each case as of or within 12 months before the Termination Date; or
  - (iv) take any action to influence or attempt to influence customers, prospective customers, vendors or suppliers of PAETEC Holding or any Subsidiary known to you to divert their business to any Other Enterprise or take any action which is intended, or would reasonably be expected, to affect adversely PAETEC Holding or any Subsidiary, the Company's Business, the reputation of PAETEC Holding or any Subsidiary, or the relationship of PAETEC Holding or any Subsidiary with its customers, prospective customers, vendors or suppliers.

(b) The parties agree that if a court of competent jurisdiction finds that any term of this Section 3 is for any reason unenforceable because it is overly broad in scope or duration, such term shall be modified to the minimum extent necessary to make it enforceable. Further, the covenants in this Section 3 shall be deemed to be a series of separate covenants and agreements, one for each and every region of each state, territory, possession or other political division of the United States of America and each other political division worldwide. If, in any judicial proceeding, a court of competent jurisdiction shall refuse to enforce any of the separate covenants deemed included herein, then, at the option of the Company, wholly unenforceable covenants shall be deemed eliminated from this Section 3 for the purpose of such proceeding to the extent necessary to permit the remaining separate covenants to be enforced in such proceeding. In addition, if a court or other enforcement body finds that any provision of this Section 3 may not be enforced as written because of a public policy, you agree that such court or enforcement body shall modify and construe such provision to permit its enforcement to the maximum extent permitted by law.

(c) You acknowledge the highly competitive nature of the industry in which the Company is involved and further as follows: (i) your services to the Company are special and unique; (ii) your work for the Company shall allow you access to Company Confidential

Information, including trade secrets, and customers; (iii) the Company's business is conducted throughout the United States and over the Internet and World Wide Web, enabling the Company and you to regularly provide services to customers nationwide; (iv) PAETEC Holding would not have entered into this Agreement but for the covenants and agreements contained in this Section 3; and (v) the agreements and covenants contained in this Section 3 are reasonable and are necessary and essential to protect the business, Company Confidential Information, including trade secrets, and goodwill of the Company. You further acknowledge that this Agreement does not restrict your ability to be gainfully employed, and you acknowledge that the geographic boundaries, scope of prohibited activities, and duration of the covenants set forth in this Section 3 are reasonable in nature and no broader than are necessary to protect the legitimate business interests of the Company. You agree not to raise any objection to the reasonableness of this Section 3 in any action or proceeding to enforce the terms of this Agreement.

#### **4. Certain IP and Inventions**

(a) During your employment with the Company, you agree that you shall not knowingly improperly use or disclose any proprietary information or trade secrets of any former employer or other Person intended by such employer or other Person not to be disclosed to the Company. You further agree that you shall not bring onto the Company's premises any unpublished document or proprietary information belonging to any former employer or other Person unless consented to in writing by such employer or other Person. You agree to inform the Company of any conflicts between your work for the Company and any obligations you may have to preserve the confidentiality of another Person's proprietary information or materials. If you do not so inform the Company, the Company may conclude that no such conflicts exist, and you agree that thereafter you shall make no claim against the Company that any such conflicts exist. The Company shall receive any such disclosures about any such conflicts in confidence and consistent with the objectives of avoiding any conflict of obligations and rights or the appearance of any conflict of interest.

(b) Inventions directly relating and applicable and useful to the Company's Business, if any, patented or unpatented, which you made prior to the commencement of your employment with the Company are excluded from the scope of this Agreement. To preclude any possible uncertainty, you have set forth on **Exhibit 1** attached hereto a complete list of all such Inventions that you have, alone or jointly with others, conceived, developed or reduced to practice or caused to be conceived, developed or reduced to practice prior to the commencement of your

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employment with the Company, that you consider to be your property or the property of third parties and that you wish to have excluded from the scope of this Agreement (collectively referred to as "Prior Inventions"). If disclosure of any such Prior Invention would cause you to violate any prior confidentiality agreement, you understand that you are not to list such Prior Inventions in **Exhibit 1** attached hereto but are only to disclose a cursory name for each such invention, a listing of the party or parties to whom it belongs and the fact that full disclosure as to such inventions has not been made for that reason. A space is provided on **Exhibit 1** attached hereto for such purpose. If no such disclosure is attached, you represent that there are no such Prior Inventions. If, in the course of your employment with the Company, you incorporate a Prior Invention into a Company product, test, service or process, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to make, have made, modify, use and sell such Prior Invention. Notwithstanding the foregoing, you agree that you shall not incorporate, or permit to be incorporated, Prior Inventions in any Company Inventions without the Company's prior written consent.

(c) You represent that, to the best of your knowledge, your performance of all of the terms of this Agreement and as an employee of the Company does not and shall not breach any agreement to keep in confidence proprietary information acquired by you prior to your employment by the Company. Further, you represent that, to the best of your knowledge, the performance of your duties with the Company shall not breach any contractual or other legal obligation you have to any third Person.

(d) You agree that any and all intellectual properties, including all ideas, concepts, themes, inventions, designs, tests, procedures, research methods, improvements, discoveries, developments, formulas, patterns, devices, processes, software programs, hardware information, engineering and other information related to the integration of hardware and software, software program codes, logic diagrams, flow charts, decision charts, drawings, procedural diagrams, coding sheets, documentation manuals, technical data, client, customer and supplier lists, and compilations of information, records, and specifications, and other matters constituting Company Confidential Information (including trade secrets), that relate in any way to the actual or prospective business of the Company or to any experimental or developmental work carried on by the Company, and that are conceived, developed or written by you, individually or in collaboration with others during your employment, and all designs, plans, reports, specifications, drawings, inventions, processes, test data and/or other information or items

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produced by you while performing your duties for the Company, shall belong to and be the sole and exclusive property of the Company, and are “works for hire” by you in your capacity as an employee of the Company. To the extent any such tangible or intangible work product of yours is not a “work for hire,” you hereby assign and transfer to the Company, to the fullest extent permitted by law, all of your rights, title and interest in such intellectual properties, including all patent, copyright or trade secret rights therein.

(e) You further agree to assist the Company in obtaining patents on all inventions, designs, improvements and discoveries that are patentable, or copyright registrations on all works of authorship, and to execute all documents and do all things necessary to vest the Company with full and exclusive title and protect against infringement by others. You agree to give the Company or its designees all assistance reasonably requested to perfect such rights, *provided* that following termination of your employment, the Company shall reimburse you for your reasonable time and expense in assisting with such matters. You further agree that if the Company is unable, after reasonable effort, to secure your signature on any such documents, any officer of the Company shall be entitled to execute any such documents as your agent and attorney-in-fact, and you hereby irrevocably designate and appoint each officer of PAETEC Holding and each Subsidiary as your agent and attorney-in-fact to execute any such documents on your behalf, and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any work, under the conditions described in this sentence. You agree that you shall promptly and fully inform the Company of and disclose to the Company all intellectual properties described in this Agreement that you make during your employment with the Company, whether individually or jointly in collaboration with others, that pertain or relate to the actual or potential business of the Company or to any experimental or developmental work carried on by the Company, whether or not conceived during regular working hours. You agree to make full disclosure to the Company immediately after creating or making any of the intellectual properties identified in this Agreement, and shall thereafter keep the Company fully informed at all times of all progress in connection therewith. You also agree that you shall promptly disclose to the Company all patent applications filed by you or on your behalf within 12 months after the Termination Date that relate to or concern the Company’s Business.

(f) You understand that the term “moral rights” shall mean any rights of attribution or integrity, including any right to claim authorship of a copyrightable work, to object to a modification of such copyrightable work, and any similar right existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or

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not such right is denominated or generally referred to as a “moral right.” You forever hereby waive and agree never to assert any moral rights you may have in any copyrightable work that is a “work for hire” or is assigned to the Company as a result of this Agreement, even after any termination of your employment with the Company.

## **5. Consideration**

As consideration for the covenants set forth in Section 3, and subject to your execution and non-revocation of a Release (as defined in Section 6(b)) within the time limits set forth in this Agreement, the Company agrees as follows:

(a) In connection with the termination of your employment with the Company (irrespective of the reason for, or manner of, such termination), unless your employment is terminated due to your death or Disability, the Company, subject to the Company’s waiver right set forth in Section 7, shall:

- (i) pay you in the form of salary continuation, in equal installments in accordance with Section 6, during each year of the two-year period in which the covenants set forth in Section 3 are in effect, an amount equal to the highest annualized base salary paid to you at any time during the one-year period immediately preceding the termination of your employment (hereafter referred to as your “Base Salary”), *provided* that, if your employment is terminated by the Company without Cause or by you for Good Reason within one year following the consummation of a Change of Control Transaction, then the Company shall pay you during each year of the two-year period in which the covenants set forth in Section 3 are in effect, an amount equal 1.5 times your Base Salary;
- (ii) subject to the Company’s ability to do the same in accordance with the terms of the applicable program documents and applicable law, as determined by the Company in good faith, continue your eligibility and participation in the following benefit programs:
  - (A) if you choose to enroll in continued medical and/or dental plan coverage for which you are eligible pursuant to the Consolidated Omnibus Budget Reconciliation Act (“COBRA”) and you actually enroll within the applicable statutory period, the Company shall pay a portion of the premiums for such

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coverage in an amount equal to the amount of the premiums it paid on your behalf for coverage in such plans immediately prior to your termination of employment (which payments shall be includible in your taxable income) until the earliest to occur of (x) the date of termination of the two-year period during which the covenants set forth in Section 3 are in effect, (y) the date on which COBRA benefits cease to be available to you under applicable law or (z) the date on which you enroll in another medical plan (and if the payments the Company makes on your behalf under this provision cease prior to the date on which any entitlement you may have to continuation of health insurance coverage ceases under applicable law, you may continue to participate in such coverage thereafter at your expense to the extent provided under any applicable law); and

- (B) during the entire two-year period in which the covenants set forth in Section 3 are in effect, the Company shall pay the premiums (on a semi-annual basis) for the Company-provided life insurance you elect to “port” following your termination of employment (and you shall be able to continue any supplemental life insurance coverage at your own expense following separation from the Company).

(b) If your employment with the Company is terminated by you for Good Reason or by the Company without Cause, the Company shall pay you on account of each annual bonus period ending during the two-year period in which the covenants set forth in Section 3 are in effect, in accordance with Section 6, an annual bonus amount equal to the lesser of (i) the “target” amount that you would have been eligible to receive under the Company’s annual bonus plan for corporate non-commissioned employees (the “Annual Bonus Plan”) in effect on the Termination Date, as if such annual bonus year had been completed and your particular bonus targets had been fully achieved at the “target” level (as opposed to the maximum level), or (ii) if the amount achieved is less than the “target” level, the amount that is achieved, or to the extent that no bonus is achieved, no amount shall be paid; *provided* that, if your employment is terminated by the Company without Cause or by you for Good Reason within one year following the consummation of a Change of Control Transaction, then the foregoing subsection (ii) provisions shall not apply and the “target” level bonus shall be paid. For purposes of applying this subsection, the bonus payment shall be applied as if you had been an employee of the Company during the entire applicable

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bonus year (i.e., the payment shall not be pro-rated in any manner) and any requirements of the Annual Bonus Plan that you be employed by the Company during all of the calendar year covered by the Annual Bonus Plan and/or be on the payroll as of the date on which the bonus payments are actually paid out shall not apply for the purposes of the entitlement under this Section 5.

(c) PAETEC Holding shall provide in each agreement evidencing awards of stock options, stock appreciation rights, restricted stock, stock units or other equity-based awards granted to you on or after the date of this Agreement (collectively, the “Applicable Awards”) that:

- (i) if your employment with the Company is terminated by you for Good Reason or by the Company without Cause, the Applicable Awards shall continue to vest over the entire two-year period in which the covenants set forth in Section 3 are in effect as if your employment with the Company had continued over such period (with the last day on which the covenants set forth in Section 3 are in effect being deemed to be your last day of employment with the Company for purposes of determining the expiration date of your Applicable Awards); and
- (ii) (A) immediately prior to the consummation of a Change of Control Transaction, all restricted stock, stock units and similar awards that are Applicable Awards held by you shall vest and the shares of stock subject thereto shall be delivered to you, and (B) 15 days prior to the scheduled consummation of a Change of Control Transaction, all stock options, stock appreciation rights and similar awards that are Applicable Awards shall become immediately exercisable and shall remain exercisable until such consummation.

(d) Notwithstanding anything in this Agreement to the contrary, the following benefits shall cease as of the Termination Date: (i) your contributions and contributions on your behalf to the Company-sponsored Code Section 401(k) plan, and any other retirement plan maintained by the Company; (ii) your coverage under the Company’s short-term and long-term disability policies; and (iii) your coverage under all other benefit programs.

(e) Nothing in this Section 5 or otherwise in this Agreement shall be construed to impose an obligation on the Company to continue your employment or retain you in any capacity after the Termination Date.



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## 6. Payment Procedures; Forfeiture of Payments

(a) Payment equal to the amount of your Base Salary pursuant to Section 5 shall be made in installments in accordance with the Company's customary payroll practices, with the first such installment commencing on the first payroll date immediately following the sixtieth day after the Termination Date (unless otherwise required by Section 6(e)) except that the Company shall have no obligation to accommodate your request for direct deposit or voluntary deductions for any purpose. In those years, if any, in which you are entitled to receive a multiple of your annualized Base Salary, each regular payroll payment that is due to you shall be based upon such multiple, so that all regular payroll payments in such year are as nearly equal in amount as reasonably practicable.

(b) Payment of amounts equal to the annual bonus amounts pursuant to Section 5 shall be made in accordance with the Company's customary annual bonus payout practices (including, to the extent applicable, "progress" or similar payments for the annual bonus periods ending during the period in which the covenants set forth in Section 3 are in effect). The first installment of such payments shall be made on the first regular payroll date of the Company immediately following the sixtieth day after the Termination Date (unless otherwise required by Section 6(e)). Without limiting the foregoing, payment of such amounts shall be made to you at the same time and in the same manner as the annual bonus is paid out to the Company's employees generally, and, in any event, payments other than "progress" payments shall be made in the calendar year immediately following the calendar year in which the applicable bonus year occurs, except that in any year in which there is no bonus payout to employees generally, the annual bonus amount due to you shall be paid to you in full on the later of February 1 of the calendar year immediately following the calendar year in which the applicable bonus year occurs and the sixtieth day after the Termination Date (unless otherwise required by Section 6(e)).

(c) If the Company determines in good faith that you have violated the terms of any of the covenants set forth in this Agreement, the Company, in addition to any other remedies available under law, may discontinue any payments being made to you, and may discontinue any other benefits to which you otherwise are entitled, pursuant to Section 5.

(d) If as a result of any legal challenge by you:

- (i) a court of competent jurisdiction determines the provisions of Section 3 to be void or unenforceable in whole or in part, the Company, in its absolute discretion, may terminate the payments and benefits set forth in Section 5 as of the effective date of the court judgment; or

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- (ii) a court of competent jurisdiction determines that your obligations under Section 3 are valid and enforceable for a period shorter than the entire period provided for in Section 3, the Company's obligations under Section 5 shall continue only for the period for which it is determined by such court that such covenants may be enforced (with any amounts payable by the Company, and any continued vesting, being reduced on a proportionate basis).

(e) Anything in this Agreement to the contrary notwithstanding, if (i) on the Termination Date, any capital stock of PAETEC Holding or any successor thereto is publicly traded on an established securities market or otherwise (within the meaning of Section 409A(a)(2)(B)(i) of the Code), (ii) you are determined to be a "specified employee" within the meaning of Section 409A(a)(2)(B) of the Code, (iii) the payments exceed the amounts permitted to be paid pursuant to Treasury Regulations section 1.409A-1(b)(9)(iii) and (iv) such delay is required to avoid the imposition of the tax set forth in Section 409A(a)(1) of the Code, as a result of the termination of your employment, you would receive any payment that, absent the application of this Section 6(e), would be subject to interest and additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(2)(B)(i) of the Code, then no such payment shall be payable prior to the date that is the earliest of (A) six months after the Termination Date, (B) the date of your death or (C) such other date as shall cause such payment not to be subject to such interest and additional tax (with a catch-up payment equal to the sum of all amounts that have been delayed to be made as of the date of the initial payment).

With respect to payments under this Agreement, for purposes of Section 409A of the Code, each severance payment and COBRA continuation reimbursement payment shall be considered one of a series of separate payments. Any amount for which you are entitled to be reimbursed by the Company shall be reimbursed to you as promptly as reasonably practicable and in any event not later than the last day of the calendar year in which the reimbursable expenses are incurred, and the amount of such expenses eligible for reimbursement during any calendar year shall not affect the amount of expenses eligible for reimbursement in any other calendar year. It is the intention of the parties that payments or benefits payable under this Agreement not be subject to the additional tax imposed pursuant to Section 409A of the Code. To the extent such potential payments or benefits could become subject to

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Section 409A of the Code, the parties shall cooperate to amend this Agreement with the goal of giving you the economic benefits provided for herein in a manner that does not result in such tax being imposed.

(f) A termination of employment under this Agreement shall be deemed to occur only in circumstances that would constitute a termination of employment for purposes of Treasury Regulations section 1.409A-1(h)(1)(ii).

(g) Notwithstanding anything in this Agreement to the contrary, as a condition to the Company's obligation to pay any form of severance or other amount to you or on your behalf upon or following the termination of your employment with the Company, you shall at the time of such termination, execute and deliver to the Company (and shall fail to revoke within such time period as may be established by law (the last day of such time period, the "Effective Date")) a full and unconditional release in favor of the Company and its Affiliates of all obligations other than those set forth in this Agreement. The Company shall use best efforts to provide such release to you within 5 business days of your termination of employment. The release shall be in substantially the form of Annex A-3 attached hereto. If your execution of such release and the Effective Date do not occur within sixty days of the Termination Date, you shall forfeit all right to payments under this Agreement.

## **7. Waiver**

The Company may waive your compliance in whole or in part with one or all of the covenants set forth in Section 3 at its sole discretion if your employment is terminated for Cause. Such a waiver must be made in writing duly executed by PAETEC Holding or any Subsidiary that employs you and shall not in any way be deemed a waiver of the Company's right to enforce any other requirements or provisions of this Agreement. You acknowledge that, if the Company so waives the covenants set forth in Section 3 in whole following the termination of your employment for Cause, the Company shall not be obligated to pay you any of the consideration (including non-cash benefits) set forth in Section 5, notwithstanding any provision of this Agreement to the contrary.

## **8. "At Will" Nature of Relationship**

Nothing in this Agreement shall be construed as constituting an agreement, understanding or commitment of any kind that the Company shall continue to employ you for any period of time. You hereby acknowledge and agree that your employment with the Company is and shall be "at will," terminable by you or by the Company at any time with or without cause and with or without notice.

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## **9. Enforcement**

You acknowledge and agree that the restrictions contained in this Agreement are reasonable and necessary to protect the business, Company Confidential Information (including trade secrets), goodwill and other interests of the Company and that any violation of these restrictions would cause the Company substantial irreparable injury. Accordingly, you agree that a remedy at law for any breach of the covenants or other obligations in this Agreement would be inadequate and that the Company, in addition to any other remedies available, shall be entitled to obtain preliminary and permanent injunctive relief to secure specific performance of such covenants and to prevent a breach or threatened breach of this Agreement without the necessity of proving actual damage and without the necessity of posting bond or security, which you expressly waive. You shall provide the Company a full accounting of all proceeds and profits received by you as a result of or in connection with a breach of this Agreement. Unless prohibited by law, the Company shall have the right to retain any amounts otherwise payable by the Company to you to satisfy any of your obligations as a result of any breach of this Agreement. You hereby agree to indemnify and hold harmless the Company from and against any damages incurred by the Company as assessed by a court of competent jurisdiction as a result of any breach of this Agreement by you. You agree that each of your obligations specified in this Agreement is a separate and independent covenant that shall survive termination of your employment for any reason and that the unenforceability of any covenant in this Agreement shall not preclude the enforcement of any other covenants in this Agreement.

## **10. Notification of New Employer**

In the event that you leave the employ of the Company, voluntarily or involuntarily, you agree to inform any subsequent employer of your rights and obligations under this Agreement. You further hereby authorize the Company to notify any future employer of your rights and obligations under this Agreement. The foregoing consent is limited to the delivery by the Company to any future employer a signed copy of this Agreement, and any written modifications thereto, and not to any characterization thereof by the Company.

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## 11. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of both parties and their respective successors and assigns, including any corporation or other Person with which or into which PAETEC Holding or any Subsidiary may be merged or which may succeed to the assets or business of PAETEC Holding or such Subsidiary, including in a Change of Control Transaction, *provided, however*, that your obligations as an employee of the Company, are personal and shall not be assigned by you. Without limiting the generality of the foregoing, PAETEC Holding shall have the right, in its discretion, to assign this Agreement to any Subsidiary for purposes of the enforcement of this Agreement.

## 12. General Terms

(a) Except as set forth in Section 12(b), this is your entire agreement with the Company with respect to its subject matter, superseding any prior oral or written, express or implied negotiations and agreements. This Agreement may not be changed in any respect except by a written agreement signed by both you and the Company. If any provision of the Agreement is held to be invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, except to the extent expressly provided in Section 6(d) or otherwise required by applicable law. The delay or omission by the Company or you in exercising its/your rights under this Agreement, or the failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party, shall not be deemed a waiver of any terms, covenants or conditions of this Agreement, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all times or any other time. The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. It is the express intention and agreement of the parties hereto that all covenants, agreements and statements made by any party in this Agreement shall survive the execution and delivery of this Agreement. In addition, the covenants, agreements and statements made in this Agreement shall survive termination of your employment with the Company for any reason.

(b) (i) Except as expressly provided in Section 12(b)(ii), any Senior Officer Confidentiality, Non-Solicitation, Non-Competition and

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Severance Agreement or Senior Vice President Confidentiality, Non-Solicitation and Non-Competition Agreement or similar agreement to which you are a party immediately prior to the effectiveness of this Agreement (collectively, the “Prior Agreement”) hereby automatically and without any further action by any party thereto terminates and is of no further force or effect.

(ii) Notwithstanding any other provision of this Agreement, it is the intention of the parties to preserve the vesting of the stock options and restricted stock units that were awarded to you prior to February 22, 2008 (the “Subject Awards”) on the same terms and conditions that governed such vesting immediately prior to the execution and delivery of the Prior Agreement dated February 22, 2008 and this Agreement, *provided* that the continued vesting of the Subject Awards following the termination of your employment shall be subject to your compliance with the covenants set forth in Section 3(a) of this Agreement rather than your compliance with any corresponding covenants in any Prior Agreement and any other agreements relating to the Subject Awards (such other agreements together with any Prior Agreement, the “Subject Award Agreements”). Consistent with the foregoing, the provisions of the Subject Award Agreements that provide for continued vesting of the Subject Awards following the termination of your employment upon specified circumstances (A) shall continue in full force and effect solely to the extent required to effectuate the intention of the parties to this Agreement as specified in the preceding sentence of this Section 12(b)(ii) and (B) shall be deemed to be amended by this Agreement so that any references therein to a non-competition covenant to which continued vesting of the Subject Awards is subject shall be deemed to be a reference to the covenants set forth in Section 3(a) of this Agreement.

(c) The use in this Agreement of the word “include” or “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matters, unless such term relates to a period of time.

### **13. Understanding and Authority**

You understand and agree that all terms of this Agreement are contractual and not a mere recital, and represent and warrant that you are competent to covenant and agree as herein provided. You represent and warrant that in negotiating and executing this Agreement, you have

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had an adequate opportunity to consult with competent legal counsel of your choosing concerning the meaning and effect of each term and provision hereof. You represent that you have carefully read this Agreement in its entirety, fully understand and agree to its terms and provisions, and intend and agree that it be final and binding.

**14. Applicable Law**

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THIS AGREEMENT AND ITS TERMS WILL BE CONSTRUED IN ACCORDANCE WITH, AND ENFORCED AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OR CHOICE OF LAW RULES OR OTHER PRINCIPLES THAT MIGHT OTHERWISE REFER CONSTRUCTION OR INTERPRETATION OF THIS AGREEMENT TO THE SUBSTANTIVE LAW OF A JURISDICTION OTHER THAN NEW YORK.

**15. Forum Selection, Jury Waiver, Service of Process**

AT ALL TIMES EACH PARTY HERETO: (A) IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY NEW YORK COURT OR FEDERAL COURT SITTING IN NEW YORK; (B) AGREES THAT ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR FEDERAL COURT; (C) TO THE EXTENT PERMITTED BY LAW, IRREVOCABLY WAIVES (I) ANY OBJECTION SUCH PARTY MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT, OR (II) ANY CLAIM THAT SUCH PARTY MAY HAVE THAT ANY SUCH ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM; (D) TO THE EXTENT PERMITTED BY LAW, IRREVOCABLY AGREES THAT A FINAL NONAPPEALABLE JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW; AND (E) IRREVOCABLY WAIVES TRIAL BY JURY AS TO ANY ACTION, MATTER, CLAIM OR ISSUE ARISING BETWEEN THEM RELATING TO THIS AGREEMENT, ITS ENFORCEMENT OR BREACH.

NOTHING IN THIS SECTION 15 SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE LEGAL PROCESS IN ANY MANNER PERMITTED BY LAW. FURTHER, YOU AGREE THAT SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL AT YOUR ADDRESS LAST KNOWN TO THE COMPANY.

**[signature page follows]**

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By your signature below, you acknowledge that you have reviewed this Agreement carefully and understand that the covenants and obligations it contains are binding on you.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**EXECUTIVE**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

**PAETEC HOLDING CORP.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



### **Company Confidential Information**

For purposes of this Agreement, the following materials and information, whether having existed, now existing, or to be developed or created during the term of your employment by the Company, constitute “Company Confidential Information” that is subject to this Agreement:

1.1. Products and Services. All information to which the Company gave me access, all information disclosed to me by the Company, and all information developed for the Company by me, alone or with others, that directly or indirectly relates to the business, products and/or services that the Company engages in, plans to engage in or contemplates engaging in, including research, development, manufacture, sale and/or licensing of products and services related to communications, integrated communications, long-distance services, Internet access, eCommerce, hardware and software (whether owned or licensed by the Company), wireless networking and wireless last-mile services, and data services, on a wholesale, resale and/or retail basis, including but not limited to local, domestic, and international long-distance services, local exchange services, IP/ISP services, high-speed Internet access, MPLS services, DSL services, eCommerce, web hosting, ASP services, data networking, systems integration services, internet telephone (VOIP) equipment and services, telecommunications expense management software and managed services, and data communications services and other proprietary products or services, whether existing or in any stage of research and development (such as trade secrets, inventions, ideas, methods, technical and laboratory data, engineering data and information, engineering information related to the integration of communications devices and equipment, benchmark test results, processes, design specifications, algorithms, technical data, technical formulas, engineering data, processes, manufacturing data, procedures, techniques, methodologies, information processing processes, and strategies).

1.2. Business and Marketing Procedures and Customer Information. All information concerning or relating to the way the Company conducts its business, markets its products and services, and all information relating to any Company customers and sales agents or prospective customers and sales agents (such as internal business procedures, business strategies, marketing plans and strategies, controls, plans, licensing techniques and practices, supplier, subcontractor and prime contractor names and contracts and other vendor information, customer information and requirements, sales agent information, computer system passwords and other computer security controls, financial information, distributor information, information supplied by clients and customers of the Company and employee data).

1.3. Not Generally Known. Any information in addition to the foregoing which is not generally known to the public or within the industry or trade areas in which the Company competes, through no fault of mine, which gives the Company any advantage over its competitors.

1.4. Third-Party Information. Any information that is confidential and proprietary to a third party that the Company has and in the future will receive from such third party subject to the Company's duty to maintain the confidentiality of such information and to use it for certain limited purposes.

1.5. All Physical Embodiments of Products, Services, Business, Marketing, Customer and Other Information. All the physical embodiments of all of the information included in Sections 1.1, 1.2, 1.3 and 1.4 of this Annex A-1, including research programs, research data, testing data, software, compositions, compounds, hardware, works of authorship, source code, other computer code, correspondence, check lists, samples, forms, ledgers, financial data, financial statements, financial reports, forecasts and projections, discounts, margins, costs, credit terms, pricing practices, pricing policies and procedures, goals and objectives, quoting practices, quoting procedures and policies, financial and operational analyses and studies, management reports of every kind, databases, employment records pertaining to employees other than yourself, customer data including customer lists, contracts, representatives, requirements and needs, specifications, data provided by or about prospective, existing or past customers and contract terms applicable to such customers, engineering notebooks, notes, drawings, work sheets, schematics, load modules, schematics, annotations, flow charts, logic diagrams, procedural diagrams, coding sheets, requirements, proposals, instructor manuals, course materials, video cassettes, transparencies, slides, presentations, proposals, printouts, studies, contracts, maintenance manuals, operational manuals, documentation, license agreements, marketing practices, marketing policies and procedures, marketing plans and strategies, marketing reports, strategic business plans, marketing analyses, seminar and class attendee rosters, trade show or exhibit attendee listings, listings of customer leads, and any other written or machine-readable expressions of such information as are fixed in any tangible media.

1.6. Trade Secrets. I acknowledge and agree that the Company Confidential Information identified in Sections 1.1, 1.2, 1.3 and 1.5 of this Annex A-1 constitute trade secrets of the Company.

1.7. Excluded Matters. The general skills, knowledge and experience gained during your employment with the Company, and information publicly available or generally known within the industry or trade areas in which the Company competes, are not considered Company Confidential Information.

**Obligations With Respect to Company Confidential Information**

1.1. Non-Disclosure. During and after your employment with the Company, you shall not misuse, misappropriate, disclose or transfer in writing, orally or by electronic means, any Company Confidential Information, directly or indirectly, to any other Person, or use Company Confidential Information in any way, except as is required in the course of your employment with the Company, nor shall you accept any employment or other professional engagement that likely shall result in the use or disclosure, even if inadvertent, of Company Confidential Information. You further agree that Company Confidential Information includes information or material received by the Company from others, including its Affiliates, and is intended by the Company to be kept in confidence by its recipients. You understand that you are not allowed to sell, license or otherwise exploit any products (including hardware or software in any form) which embody or otherwise exploit in whole or in part any Company Confidential Information or materials. You acknowledge and agree that the sale, misappropriation, or unauthorized use or disclosure in writing, orally or by electronic means, at any time of Company Confidential Information obtained by you during the course of your employment constitutes unfair competition. You agree and promise not to engage in any unfair competition with the Company, either during your employment or at any other time thereafter. You further acknowledge and agree that the Company's products and services can be developed and marketed nationwide, and therefore, the protection afforded the Company must likewise be nationwide.

1.2. Preservation, Removal and Return of Information. You agree to take all reasonable steps to preserve the confidential and proprietary nature of Company Confidential Information and to prevent the inadvertent or accidental disclosure of Company Confidential Information. You acknowledge and agree that all Company Confidential Information, whether prepared by you or otherwise coming into your possession while you are employed by the Company, shall remain the exclusive property of the Company. You agree that during your employment with the Company and thereafter, you shall not use, disclose, transfer, or remove from the Company's premises any Company Confidential Information other than as authorized by the Company. You agree to return to the Company all Company Confidential Information and copies thereof, in whatever form, at any time upon the request of the Company, and at the time of your termination of employment for any reason. You agree not to retain any copies of any Company Confidential Information or Company-owned materials after your termination of employment for any reason whatsoever. Your obligations under Section 2 of the Agreement (including this Annex A-2) shall continue after termination of your employment with the Company.

A-2-1

**PRIOR INVENTIONS**

This Exhibit 1 sets forth a complete list of all Inventions that I, alone or jointly with others, have conceived, developed or reduced to practice or caused to be conceived, developed or reduced to practice prior to the commencement of my employment with the Company, that I consider to be my property or the property of third parties and that I wish to have excluded from the scope of the Executive Confidentiality, Non-Solicitation, Non-Competition and Severance Agreement (collectively referred to as "Prior Inventions").

I understand that if disclosure of any such Prior Invention would cause me to violate any prior confidentiality agreement, I am not to list such Prior Inventions in this Exhibit 1 but am only to disclose a cursory name for each such invention, a listing of the party or parties to whom it belongs and the fact that full disclosure as to such inventions has not been made for that reason. A space is provided below for such purpose.

If no such disclosure is attached, I represent that there are no Prior Inventions.

**Description of Prior Inventions And Related Documents (if applicable):**

Title and Description of Invention And Related Document	Date of Invention/ Document	Owners of Invention/Document	Name of Witness(es) to Invention/ Document

If no information is listed herein, I hereby affirm that I do not have any such prior intellectual properties, inventions or other works to identify.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

**EXECUTIVE CONFIDENTIALITY, NON-SOLICITATION,  
NON-COMPETITION AND SEVERANCE AGREEMENT**

THIS EXECUTIVE CONFIDENTIALITY, NON-SOLICITATION, NON-COMPETITION AND SEVERANCE AGREEMENT (together with the annexes and exhibit attached hereto, this “Agreement”) is entered into as of the date set forth on the signature page hereto between PAETEC Holding Corp., a Delaware corporation (“PAETEC Holding”), and (“you”).

WHEREAS, the Company (as defined herein) has developed and expects to continue to develop confidential and proprietary materials and highly sensitive information of significant value, which you recognize must be carefully protected as set forth below for the Company to be successful;

NOW, THEREFORE, to induce the Company to continue to employ you, and in consideration of your continued employment by the Company and for other good and valuable consideration, the receipt and sufficiency of which you hereby acknowledge, PAETEC Holding and you hereby agree, intending to be legally bound, as follows:

**1. Defined Terms**

For purposes of this Agreement, the following capitalized terms have the meanings ascribed to such terms in this Section 1:

“**Affiliate**” shall have the meaning ascribed to such term in Rule 12b-2 promulgated under the Exchange Act.

“**Board**” shall mean the board of directors of PAETEC Holding.

“**Cause**” shall mean termination of your employment with the Company due to any of the following: (a) your material failure or refusal to perform the duties assigned to you, *provided* that the Company gives you a written notice of your failure or refusal to perform such duties and 20 days to remedy such failure or refusal, and *provided, further*, that such duties are not materially inconsistent with those of other individuals who report directly to the officer of the Company to whom you directly report (or materially inconsistent with those of other individuals reporting directly to the Board, if you are the Chief Executive Officer of PAETEC Holding); (b) your refusal to follow the reasonable directives of the Board, the Chief Executive Officer or the other officer to whom you directly report, *provided* that the Company gives you a written

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notice of your refusal to perform such directives and 20 days to remedy such refusal, and *provided, further*, that such directives are not materially inconsistent with those of other individuals who report directly to the officer of the Company to whom you directly report (or the Board, if you are the Chief Executive Officer of PAETEC Holding); or (c) your conviction of a felony.

**“Change of Control Transaction”** shall mean any of the following:

- (a) the dissolution or liquidation of PAETEC Holding;
- (b) a merger, consolidation, reorganization or similar transaction involving PAETEC Holding (i) in which PAETEC Holding is not the surviving corporation or other surviving Person or (ii) which results in PAETEC Holding becoming the wholly-owned subsidiary of another corporation or other Person (any transaction of the type specified in this clause (ii), a “Parent Transaction”), unless the Existing Stockholders beneficially own (within the meaning of Rule 13d-3 promulgated under the Exchange Act) in the aggregate immediately following the consummation of such transaction more than 50% of the combined voting power of all classes of outstanding Voting Securities of the successor to PAETEC Holding (in the case of a transaction referred to in clause (i) above) or of the corporation or other Person whose Voting Securities are issued to the Existing Stockholders in such transaction (in the case of a transaction referred to in clause (i) or (ii) above);
- (c) a sale of all or substantially all of the assets of PAETEC Holding to another corporation or other Person, as determined in accordance with the applicable law of the State of Delaware;
- (d) any other transaction (including a merger, consolidation, reorganization or similar transaction) that results in any corporation or other Person, other than the Arunas A. Chesonis and his controlled Affiliates, beneficially owning (within the meaning of Rule 13d-3 promulgated under the Exchange Act) immediately following the consummation of such transaction more than 50% of the combined voting power of all classes of outstanding Voting Securities of (i) the corporation (including, to the extent applicable, PAETEC Holding) or other Person whose Voting Securities are issued to the Existing Stockholders in such transaction or (ii) if no such issuance is made in such transaction, PAETEC Holding; or

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- (e) the Incumbent Board Members ceasing for any reason to constitute (i) at any time prior to the consummation of a Parent Transaction, a majority of the Board or a majority of the board of directors, board of managers or other governing body of any successor to PAETEC Holding or (ii) at any time following the consummation of a Parent Transaction, a majority of the board of directors, board of managers or other governing body of the corporation or other Person whose Voting Securities are issued to the Existing Stockholders in such transaction; *provided, however*, that any individual becoming a member of the Board or of such board of directors, board of managers or other governing body, as the case may be, subsequent to the date of this Agreement whose appointment or nomination for election was approved by a vote of at least a majority of the Incumbent Board Members shall be deemed to be an Incumbent Board Member for purposes of this clause (e), but excluding, for such purposes, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors (or managers or other members of any such governing body) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board or such board of directors, board of managers or other governing body, as the case may be.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended, as in effect on the date hereof or as hereafter amended.

**“Company”** shall mean (a) collectively, PAETEC Holding and its Subsidiaries, or (b) when express reference in this Agreement is made to your employment with the Company or when reference in this Agreement is made to any notice or other communication you are required or permitted to provide hereunder, PAETEC Holding, if you are employed by PAETEC Holding, or any Subsidiary of PAETEC Holding, if you are employed by such Subsidiary, and shall include the successors and assigns of PAETEC Holding and each Subsidiary.

**“Company’s Business”** shall mean the businesses in which PAETEC Holding and its Subsidiaries engage or plan to engage (even if they have not yet begun to engage in such businesses) at any time during the term of your employment with the Company, which businesses shall include research, development, manufacture, sale,

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resale and/or licensing of products and services related to communications, integrated communications, long-distance services, Internet access, eCommerce, hardware and software (whether owned or licensed by the Company), wireless networking and wireless last mile services, and data services, on a wholesale, resale and/or retail basis, including local, domestic, and international long-distance services, local exchange services, IP/ISP services, high-speed Internet access, MPLS services, DSL services, eCommerce, web hosting, ASP services, data networking, systems integration services, telecommunications hardware manufacturing and sale, internet telephony (VOIP) equipment and services, telecommunications expense management software and managed services, and data communications services.

**“Disability”** shall mean your “permanent and total disability” within the meaning of Section 22(e)(3) of the Code.

**“Exchange Act”** shall mean the Securities Exchange Act of 1934, as amended, as in effect on the date hereof or as hereafter amended.

**“Existing Stockholders”** shall mean, with respect to any transaction, all holders of all classes of Voting Securities of PAETEC Holding as of the time immediately preceding the consummation of such transaction.

**“Good Reason”** shall mean termination of your employment with the Company due to any of the following: (a) your assignment without your consent to a position, responsibilities, or duties of a materially lesser status or degree of responsibility than your position, responsibilities, or duties as of the date of this Agreement; (b) any action by the Company to reduce your base salary by a material amount at any time; (c) any action by the Company to reduce your “target” annual bonus opportunity (as opposed to your minimum or maximum annual bonus opportunity), expressed as a percentage of your annual base salary, by a material amount at any time; or (d) a requirement by the Company that you be based anywhere other than within 50 miles of your current location without your consent; *provided, however*, you must give written notice to the Company within 90 days of the occurrence of the condition that is the basis for such Good Reason; *provided, further*, that, if the basis for such Good Reason is correctible and the Company has corrected the basis for such Good Reason within 30 days after receipt of such notice, you may not then terminate your employment for Good Reason with respect to the matters addressed in such notice, and therefore your notice of termination with respect to such basis for Good Reason shall automatically become null and void.



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**“Incumbent Board Members”** shall mean the individuals who, as of the date of this Agreement, constitute the Board.

**“Person”** shall mean an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

**“Subsidiary”** shall mean any corporation, partnership, limited liability company, association or other business entity of which more than 50% of the voting power of the outstanding Voting Securities is owned, directly or indirectly, by PAETEC Holding and one or more other Subsidiaries of PAETEC Holding.

**“Voting Securities”** shall mean, with respect to any Person, capital stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

## **2. Confidentiality**

(a) You acknowledge that you have been and shall be provided access to the Company Confidential Information and occupy and shall occupy a position of trust and confidence with respect to the Company’s affairs and business. For purposes of this Agreement, “Company Confidential Information” shall have the meaning ascribed to such term on **Annex A-1** attached hereto and made a part hereof.

(b) You acknowledge and agree that: (i) during your employment with the Company, you shall have access to and become acquainted with the Company Confidential Information and materials, including its trade secrets, and shall occupy a position of trust and confidence with respect to the Company’s affairs, business and customer goodwill, and the Company Confidential Information; (ii) the interests afforded protection by this Agreement are the Company’s legitimate business interests, deserving of protection; and (iii) the Company would not have entered into or continued its employment relationship with you without your execution of this Agreement. You agree to take the steps set forth on **Annex A-2** attached hereto and made a part hereof to preserve the confidential and proprietary nature of the Company Confidential Information and materials and to preserve the Company’s goodwill.

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### 3. Non-Competition and Non-Solicitation

(a) Unless the following covenants are waived in whole or in part by the Company in accordance with Section 7, for a period of two years after the effective date of termination of your employment with the Company (the “Termination Date”) (irrespective of the reason for, or manner of, such termination), you shall not, directly or indirectly:

- (i) solicit, recruit or hire, or in any manner assist in the soliciting, recruitment or hiring of (A) any of the employees of PAETEC Holding or any Subsidiary or any individuals who were employed by PAETEC Holding or any Subsidiary within 12 months before the Termination Date, or (B) any of the sales agents or independent sales agents of PAETEC Holding or any Subsidiary, or any individual or Person that was a sales agent or independent sales agent of PAETEC Holding or any Subsidiary within 12 months before the Termination Date;
- (ii) individually or as an officer, director, employee, shareholder or equity owner (other than as a shareholder or other equity owner of less than 1% of the outstanding capital stock of a publicly traded company), consultant, contractor, partner, joint venturer, agent, manager, or other representative, work for, become employed by or perform services for any corporation or other Person that is competitive with the Company’s Business or that would divert business from PAETEC Holding or any Subsidiary in any geographical area in which PAETEC Holding or any Subsidiary is then conducting operations (such competitive corporation or other Person, an “Other Enterprise”), provided that you shall not be restricted from working for, becoming employed by or performing services for any Other Enterprise, even if another division, subsidiary or Affiliate of such Other Enterprise is competitive with the Company’s Business or would divert business from PAETEC Holding or any Subsidiary, so long as you do not perform any services for such division, subsidiary or Affiliate, and provided, further, that you shall not be restricted under this Section 3(b)(ii) from competing with any business of PAETEC Holding or any Subsidiary if you did not provide any services to such business of PAETEC Holding or such Subsidiary or did not possess or have knowledge of Company Confidential Information within the 24-month period before the Termination Date;

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- (iii) solicit on behalf of any Other Enterprise, or accept on behalf of any Other Enterprise, business from any individual, business or organization that was known by you to be a customer of PAETEC Holding or any Subsidiary, or identified by PAETEC Holding or any Subsidiary as a prospective customer of PAETEC Holding or such Subsidiary, in each case as of or within 12 months before the Termination Date; or
  - (iv) take any action to influence or attempt to influence customers, prospective customers, vendors or suppliers of PAETEC Holding or any Subsidiary known to you to divert their business to any Other Enterprise or take any action which is intended, or would reasonably be expected, to affect adversely PAETEC Holding or any Subsidiary, the Company's Business, the reputation of PAETEC Holding or any Subsidiary, or the relationship of PAETEC Holding or any Subsidiary with its customers, prospective customers, vendors or suppliers.

(b) The parties agree that if a court of competent jurisdiction finds that any term of this Section 3 is for any reason unenforceable because it is overly broad in scope or duration, such term shall be modified to the minimum extent necessary to make it enforceable. Further, the covenants in this Section 3 shall be deemed to be a series of separate covenants and agreements, one for each and every region of each state, territory, possession or other political division of the United States of America and each other political division worldwide. If, in any judicial proceeding, a court of competent jurisdiction shall refuse to enforce any of the separate covenants deemed included herein, then, at the option of the Company, wholly unenforceable covenants shall be deemed eliminated from this Section 3 for the purpose of such proceeding to the extent necessary to permit the remaining separate covenants to be enforced in such proceeding. In addition, if a court or other enforcement body finds that any provision of this Section 3 may not be enforced as written because of a public policy, you agree that such court or enforcement body shall modify and construe such provision to permit its enforcement to the maximum extent permitted by law.

(c) You acknowledge the highly competitive nature of the industry in which the Company is involved and further as follows: (i) your services to the Company are special and unique; (ii) your work for the Company shall allow you access to Company Confidential

Information, including trade secrets, and customers; (iii) the Company's business is conducted throughout the United States and over the Internet and World Wide Web, enabling the Company and you to regularly provide services to customers nationwide; (iv) PAETEC Holding would not have entered into this Agreement but for the covenants and agreements contained in this Section 3; and (v) the agreements and covenants contained in this Section 3 are reasonable and are necessary and essential to protect the business, Company Confidential Information, including trade secrets, and goodwill of the Company. You further acknowledge that this Agreement does not restrict your ability to be gainfully employed, and you acknowledge that the geographic boundaries, scope of prohibited activities, and duration of the covenants set forth in this Section 3 are reasonable in nature and no broader than are necessary to protect the legitimate business interests of the Company. You agree not to raise any objection to the reasonableness of this Section 3 in any action or proceeding to enforce the terms of this Agreement.

#### **4. Certain IP and Inventions**

(a) During your employment with the Company, you agree that you shall not knowingly improperly use or disclose any proprietary information or trade secrets of any former employer or other Person intended by such employer or other Person not to be disclosed to the Company. You further agree that you shall not bring onto the Company's premises any unpublished document or proprietary information belonging to any former employer or other Person unless consented to in writing by such employer or other Person. You agree to inform the Company of any conflicts between your work for the Company and any obligations you may have to preserve the confidentiality of another Person's proprietary information or materials. If you do not so inform the Company, the Company may conclude that no such conflicts exist, and you agree that thereafter you shall make no claim against the Company that any such conflicts exist. The Company shall receive any such disclosures about any such conflicts in confidence and consistent with the objectives of avoiding any conflict of obligations and rights or the appearance of any conflict of interest.

(b) Inventions directly relating and applicable and useful to the Company's Business, if any, patented or unpatented, which you made prior to the commencement of your employment with the Company are excluded from the scope of this Agreement. To preclude any possible uncertainty, you have set forth on **Exhibit 1** attached hereto a complete list of all such Inventions that you have, alone or jointly with others, conceived, developed or reduced to practice or caused to be conceived, developed or reduced to practice prior to the commencement of your

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employment with the Company, that you consider to be your property or the property of third parties and that you wish to have excluded from the scope of this Agreement (collectively referred to as "Prior Inventions"). If disclosure of any such Prior Invention would cause you to violate any prior confidentiality agreement, you understand that you are not to list such Prior Inventions in **Exhibit 1** attached hereto but are only to disclose a cursory name for each such invention, a listing of the party or parties to whom it belongs and the fact that full disclosure as to such inventions has not been made for that reason. A space is provided on **Exhibit 1** attached hereto for such purpose. If no such disclosure is attached, you represent that there are no such Prior Inventions. If, in the course of your employment with the Company, you incorporate a Prior Invention into a Company product, test, service or process, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to make, have made, modify, use and sell such Prior Invention. Notwithstanding the foregoing, you agree that you shall not incorporate, or permit to be incorporated, Prior Inventions in any Company Inventions without the Company's prior written consent.

(c) You represent that, to the best of your knowledge, your performance of all of the terms of this Agreement and as an employee of the Company does not and shall not breach any agreement to keep in confidence proprietary information acquired by you prior to your employment by the Company. Further, you represent that, to the best of your knowledge, the performance of your duties with the Company shall not breach any contractual or other legal obligation you have to any third Person.

(d) You agree that any and all intellectual properties, including all ideas, concepts, themes, inventions, designs, tests, procedures, research methods, improvements, discoveries, developments, formulas, patterns, devices, processes, software programs, hardware information, engineering and other information related to the integration of hardware and software, software program codes, logic diagrams, flow charts, decision charts, drawings, procedural diagrams, coding sheets, documentation manuals, technical data, client, customer and supplier lists, and compilations of information, records, and specifications, and other matters constituting Company Confidential Information (including trade secrets), that relate in any way to the actual or prospective business of the Company or to any experimental or developmental work carried on by the Company, and that are conceived, developed or written by you, individually or in collaboration with others during your employment, and all designs, plans, reports, specifications, drawings, inventions, processes, test data and/or other information or items

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produced by you while performing your duties for the Company, shall belong to and be the sole and exclusive property of the Company, and are “works for hire” by you in your capacity as an employee of the Company. To the extent any such tangible or intangible work product of yours is not a “work for hire,” you hereby assign and transfer to the Company, to the fullest extent permitted by law, all of your rights, title and interest in such intellectual properties, including all patent, copyright or trade secret rights therein.

(e) You further agree to assist the Company in obtaining patents on all inventions, designs, improvements and discoveries that are patentable, or copyright registrations on all works of authorship, and to execute all documents and do all things necessary to vest the Company with full and exclusive title and protect against infringement by others. You agree to give the Company or its designees all assistance reasonably requested to perfect such rights, *provided* that following termination of your employment, the Company shall reimburse you for your reasonable time and expense in assisting with such matters. You further agree that if the Company is unable, after reasonable effort, to secure your signature on any such documents, any officer of the Company shall be entitled to execute any such documents as your agent and attorney-in-fact, and you hereby irrevocably designate and appoint each officer of PAETEC Holding and each Subsidiary as your agent and attorney-in-fact to execute any such documents on your behalf, and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any work, under the conditions described in this sentence. You agree that you shall promptly and fully inform the Company of and disclose to the Company all intellectual properties described in this Agreement that you make during your employment with the Company, whether individually or jointly in collaboration with others, that pertain or relate to the actual or potential business of the Company or to any experimental or developmental work carried on by the Company, whether or not conceived during regular working hours. You agree to make full disclosure to the Company immediately after creating or making any of the intellectual properties identified in this Agreement, and shall thereafter keep the Company fully informed at all times of all progress in connection therewith. You also agree that you shall promptly disclose to the Company all patent applications filed by you or on your behalf within 12 months after the Termination Date that relate to or concern the Company’s Business.

(f) You understand that the term “moral rights” shall mean any rights of attribution or integrity, including any right to claim authorship of a copyrightable work, to object to a modification of such copyrightable work, and any similar right existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or

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not such right is denominated or generally referred to as a “moral right.” You forever hereby waive and agree never to assert any moral rights you may have in any copyrightable work that is a “work for hire” or is assigned to the Company as a result of this Agreement, even after any termination of your employment with the Company.

## **5. Consideration**

As consideration for the covenants set forth in Section 3, and subject to your execution and non-revocation of a Release (as defined in Section 6(b)) within the time limits set forth in this Agreement, the Company agrees as follows:

(a) In connection with the termination of your employment with the Company (irrespective of the reason for, or manner of, such termination), unless your employment is terminated due to your death or Disability, the Company, subject to the Company’s waiver right set forth in Section 7, shall:

- (i) pay you in the form of salary continuation, in equal installments in accordance with Section 6, during each year of the two-year period in which the covenants set forth in Section 3 are in effect, an amount equal to the highest annualized base salary paid to you at any time during the one-year period immediately preceding the termination of your employment (hereafter referred to as your “Base Salary”);
- (ii) subject to the Company’s ability to do the same in accordance with the terms of the applicable program documents and applicable law, as determined by the Company in good faith, continue your eligibility and participation in the following benefit programs:
  - (A) if you choose to enroll in continued medical and/or dental plan coverage for which you are eligible pursuant to the Consolidated Omnibus Budget Reconciliation Act (“COBRA”) and you actually enroll within the applicable statutory period, the Company shall pay a portion of the premiums for such coverage in an amount equal to the amount of the premiums it paid on your behalf for coverage in such plans immediately prior to your termination of employment (which payments shall be includible in your taxable income) until the earliest to occur of (x) the date of termination of the two-year period during

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which the covenants set forth in Section 3 are in effect, (y) the date on which COBRA benefits cease to be available to you under applicable law or (z) the date on which you enroll in another medical plan (and if the payments the Company makes on your behalf under this provision cease prior to the date on which any entitlement you may have to continuation of health insurance coverage ceases under applicable law, you may continue to participate in such coverage thereafter at your expense to the extent provided under any applicable law); and

- (B) during the entire two-year period in which the covenants set forth in Section 3 are in effect, the Company shall pay the premiums (on a semi-annual basis) for the Company-provided life insurance you elect to “port” following your termination of employment (and you shall be able to continue any supplemental life insurance coverage at your own expense following separation from the Company).

(b) If your employment with the Company is terminated by you for Good Reason or by the Company without Cause, the Company shall pay you on account of each annual bonus period ending during the two-year period in which the covenants set forth in Section 3 are in effect, in accordance with Section 6, an annual bonus amount equal to the lesser of (i) the “target” amount that you would have been eligible to receive under the Company’s annual bonus plan for corporate non-commissioned employees (the “Annual Bonus Plan”) in effect on the Termination Date, as if such annual bonus year had been completed and your particular bonus targets had been fully achieved at the “target” level (as opposed to the maximum level), or (ii) if the amount achieved is less than the “target” level, the amount that is achieved, or to the extent that no bonus is achieved, no amount shall be paid; *provided* that, if your employment is terminated by the Company without Cause or by you for Good Reason within one year following the consummation of a Change of Control Transaction, then the foregoing subsection (ii) provisions shall not apply and the “target” level bonus shall be paid. For purposes of applying this subsection, the bonus payment shall be applied as if you had been an employee of the Company during the entire applicable bonus year (i.e., the payment shall not be pro-rated in any manner) and any requirements of the Annual Bonus Plan that you be employed by the Company during all of the calendar year covered by the Annual Bonus Plan and/or be on the payroll as of the date on which the bonus payments are actually paid out shall not apply for the purposes of the entitlement under this Section 5.



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(c) PAETEC Holding shall provide in each agreement evidencing awards of stock options, stock appreciation rights, restricted stock, stock units or other equity-based awards granted to you on or after the date of this Agreement (collectively, the “Applicable Awards”) that:

- (i) if your employment with the Company is terminated by you for Good Reason or by the Company without Cause, the Applicable Awards shall continue to vest over the entire two-year period in which the covenants set forth in Section 3 are in effect as if your employment with the Company had continued over such period (with the last day on which the covenants set forth in Section 3 are in effect being deemed to be your last day of employment with the Company for purposes of determining the expiration date of your Applicable Awards); and
- (ii) (A) immediately prior to the consummation of a Change of Control Transaction, all restricted stock, stock units and similar awards that are Applicable Awards held by you shall vest and the shares of stock subject thereto shall be delivered to you, and (B) 15 days prior to the scheduled consummation of a Change of Control Transaction, all stock options, stock appreciation rights and similar awards that are Applicable Awards shall become immediately exercisable and shall remain exercisable until such consummation.

(d) Notwithstanding anything in this Agreement to the contrary, the following benefits shall cease as of the Termination Date: (i) your contributions and contributions on your behalf to the Company-sponsored Code Section 401(k) plan, and any other retirement plan maintained by the Company; (ii) your coverage under the Company’s short-term and long-term disability policies; and (iii) your coverage under all other benefit programs.

(e) Nothing in this Section 5 or otherwise in this Agreement shall be construed to impose an obligation on the Company to continue your employment or retain you in any capacity after the Termination Date.

## **6. Payment Procedures; Forfeiture of Payments**

(a) Payment equal to the amount of your Base Salary pursuant to Section 5 shall be made in installments in accordance with the Company’s customary payroll practices, with the first such installment commencing on the first payroll date immediately following the sixtieth

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day after the Termination Date (unless otherwise required by Section 6(e)) except that the Company shall have no obligation to accommodate your request for direct deposit or voluntary deductions for any purpose.

(b) Payment of amounts equal to the annual bonus amounts pursuant to Section 5 shall be made in accordance with the Company's customary annual bonus payout practices (including, to the extent applicable, "progress" or similar payments for the annual bonus periods ending during the period in which the covenants set forth in Section 3 are in effect). The first installment of such payments shall be made on the first regular payroll date of the Company immediately following the sixtieth day after the Termination Date (unless otherwise required by Section 6(e)). Without limiting the foregoing, payment of such amounts shall be made to you at the same time and in the same manner as the annual bonus is paid out to the Company's employees generally, and, in any event, payments other than "progress" payments shall be made in the calendar year immediately following the calendar year in which the applicable bonus year occurs, except that in any year in which there is no bonus payout to employees generally, the annual bonus amount due to you shall be paid to you in full on the later of February 1 of the calendar year immediately following the calendar year in which the applicable bonus year occurs and the sixtieth day after the Termination Date (unless otherwise required by Section 6(e)).

(c) If the Company determines in good faith that you have violated the terms of any of the covenants set forth in this Agreement, the Company, in addition to any other remedies available under law, may discontinue any payments being made to you, and may discontinue any other benefits to which you otherwise are entitled, pursuant to Section 5.

(d) If as a result of any legal challenge by you:

- (i) a court of competent jurisdiction determines the provisions of Section 3 to be void or unenforceable in whole or in part, the Company, in its absolute discretion, may terminate the payments and benefits set forth in Section 5 as of the effective date of the court judgment; or
- (ii) a court of competent jurisdiction determines that your obligations under Section 3 are valid and enforceable for a period shorter than the entire period provided for in Section 3, the Company's obligations under Section 5 shall continue only for the period for which it is determined by such court that such covenants may be enforced (with any amounts payable by the Company, and any continued vesting, being reduced on a proportionate basis).

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(e) Anything in this Agreement to the contrary notwithstanding, if (i) on the Termination Date, any capital stock of PAETEC Holding or any successor thereto is publicly traded on an established securities market or otherwise (within the meaning of Section 409A(a)(2)(B)(i) of the Code), (ii) you are determined to be a “specified employee” within the meaning of Section 409A(a)(2)(B) of the Code, (iii) the payments exceed the amounts permitted to be paid pursuant to Treasury Regulations section 1.409A-1(b)(9)(iii) and (iv) such delay is required to avoid the imposition of the tax set forth in Section 409A(a)(1) of the Code, as a result of the termination of your employment, you would receive any payment that, absent the application of this Section 6(e), would be subject to interest and additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(2)(B)(i) of the Code, then no such payment shall be payable prior to the date that is the earliest of (A) six months after the Termination Date, (B) the date of your death or (C) such other date as shall cause such payment not to be subject to such interest and additional tax (with a catch-up payment equal to the sum of all amounts that have been delayed to be made as of the date of the initial payment).

With respect to payments under this Agreement, for purposes of Section 409A of the Code, each severance payment and COBRA continuation reimbursement payment shall be considered one of a series of separate payments. Any amount for which you are entitled to be reimbursed by the Company shall be reimbursed to you as promptly as reasonably practicable and in any event not later than the last day of the calendar year in which the reimbursable expenses are incurred, and the amount of such expenses eligible for reimbursement during any calendar year shall not affect the amount of expenses eligible for reimbursement in any other calendar year. It is the intention of the parties that payments or benefits payable under this Agreement not be subject to the additional tax imposed pursuant to Section 409A of the Code. To the extent such potential payments or benefits could become subject to Section 409A of the Code, the parties shall cooperate to amend this Agreement with the goal of giving you the economic benefits provided for herein in a manner that does not result in such tax being imposed.

(f) A termination of employment under this Agreement shall be deemed to occur only in circumstances that would constitute a termination of employment for purposes of Treasury Regulations section 1.409A-1(h)(1)(ii).

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(g) Notwithstanding anything in this Agreement to the contrary, as a condition to the Company's obligation to pay any form of severance or other amount to you or on your behalf upon or following the termination of your employment with the Company, you shall at the time of such termination, execute and deliver to the Company (and shall fail to revoke within such time period as may be established by law (the last day of such time period, the "Effective Date")) a full and unconditional release in favor of the Company and its Affiliates of all obligations other than those set forth in this Agreement. The Company shall use best efforts to provide such release to you within 5 business days of your termination of employment. The release shall be in substantially the form of Annex A-3 attached hereto. If your execution of such release and the Effective Date do not occur within sixty days of the Termination Date, you shall forfeit all right to payments under this Agreement.

## **7. Waiver**

The Company may waive your compliance in whole or in part with one or all of the covenants set forth in Section 3 at its sole discretion if your employment is terminated for Cause. Such a waiver must be made in writing duly executed by PAETEC Holding or any Subsidiary that employs you and shall not in any way be deemed a waiver of the Company's right to enforce any other requirements or provisions of this Agreement. You acknowledge that, if the Company so waives the covenants set forth in Section 3 in whole following the termination of your employment for Cause, the Company shall not be obligated to pay you any of the consideration (including non-cash benefits) set forth in Section 5, notwithstanding any provision of this Agreement to the contrary.

## **8. "At Will" Nature of Relationship**

Nothing in this Agreement shall be construed as constituting an agreement, understanding or commitment of any kind that the Company shall continue to employ you for any period of time. You hereby acknowledge and agree that your employment with the Company is and shall be "at will," terminable by you or by the Company at any time with or without cause and with or without notice.

## **9. Enforcement**

You acknowledge and agree that the restrictions contained in this Agreement are reasonable and necessary to protect the business, Company Confidential Information (including trade secrets), goodwill and other interests of the Company and that any violation of these restrictions would cause the Company substantial irreparable injury.

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Accordingly, you agree that a remedy at law for any breach of the covenants or other obligations in this Agreement would be inadequate and that the Company, in addition to any other remedies available, shall be entitled to obtain preliminary and permanent injunctive relief to secure specific performance of such covenants and to prevent a breach or threatened breach of this Agreement without the necessity of proving actual damage and without the necessity of posting bond or security, which you expressly waive. You shall provide the Company a full accounting of all proceeds and profits received by you as a result of or in connection with a breach of this Agreement. Unless prohibited by law, the Company shall have the right to retain any amounts otherwise payable by the Company to you to satisfy any of your obligations as a result of any breach of this Agreement. You hereby agree to indemnify and hold harmless the Company from and against any damages incurred by the Company as assessed by a court of competent jurisdiction as a result of any breach of this Agreement by you. You agree that each of your obligations specified in this Agreement is a separate and independent covenant that shall survive termination of your employment for any reason and that the unenforceability of any covenant in this Agreement shall not preclude the enforcement of any other covenants in this Agreement.

#### **10. Notification of New Employer**

In the event that you leave the employ of the Company, voluntarily or involuntarily, you agree to inform any subsequent employer of your rights and obligations under this Agreement. You further hereby authorize the Company to notify any future employer of your rights and obligations under this Agreement. The foregoing consent is limited to the delivery by the Company to any future employer a signed copy of this Agreement, and any written modifications thereto, and not to any characterization thereof by the Company.

#### **11. Successors and Assigns**

This Agreement shall be binding upon and inure to the benefit of both parties and their respective successors and assigns, including any corporation or other Person with which or into which PAETEC Holding or any Subsidiary may be merged or which may succeed to the assets or business of PAETEC Holding or such Subsidiary, including in a Change of Control Transaction, *provided, however*, that your obligations as an employee of the Company, are personal and shall not be assigned by you. Without limiting the generality of the foregoing, PAETEC Holding shall have the right, in its discretion, to assign this Agreement to any Subsidiary for purposes of the enforcement of this Agreement.

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## 12. General Terms

(a) Except as set forth in Section 12(b), this is your entire agreement with the Company with respect to its subject matter, superseding any prior oral or written, express or implied negotiations and agreements. This Agreement may not be changed in any respect except by a written agreement signed by both you and the Company. If any provision of the Agreement is held to be invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, except to the extent expressly provided in Section 6(d) or otherwise required by applicable law. The delay or omission by the Company or you in exercising its/your rights under this Agreement, or the failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party, shall not be deemed a waiver of any terms, covenants or conditions of this Agreement, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all times or any other time. The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. It is the express intention and agreement of the parties hereto that all covenants, agreements and statements made by any party in this Agreement shall survive the execution and delivery of this Agreement. In addition, the covenants, agreements and statements made in this Agreement shall survive termination of your employment with the Company for any reason.

(b) (i) Except as expressly provided in Section 12(b)(ii), any Senior Officer Confidentiality, Non-Solicitation, Non-Competition and Severance Agreement or Senior Vice President Confidentiality, Non-Solicitation and Non-Competition Agreement or similar agreement to which you are a party immediately prior to the effectiveness of this Agreement (collectively, the "Prior Agreement") hereby automatically and without any further action by any party thereto terminates and is of no further force or effect.

(ii) Notwithstanding any other provision of this Agreement, it is the intention of the parties to preserve the vesting of the stock options and restricted stock units that were awarded to you prior to February 22, 2008 (the "Subject Awards") on the same terms and conditions that governed such vesting immediately prior to the execution and delivery of the Prior Agreement dated February 22, 2008 and this

Agreement, *provided* that the continued vesting of the Subject Awards following the termination of your employment shall be subject to your compliance with the covenants set forth in Section 3(a) of this Agreement rather than your compliance with any corresponding covenants in any Prior Agreement and any other agreements relating to the Subject Awards (such other agreements together with any Prior Agreement, the “Subject Award Agreements”). Consistent with the foregoing, the provisions of the Subject Award Agreements that provide for continued vesting of the Subject Awards following the termination of your employment upon specified circumstances (A) shall continue in full force and effect solely to the extent required to effectuate the intention of the parties to this Agreement as specified in the preceding sentence of this Section 12(b)(ii) and (B) shall be deemed to be amended by this Agreement so that any references therein to a non-competition covenant to which continued vesting of the Subject Awards is subject shall be deemed to be a reference to the covenants set forth in Section 3(a) of this Agreement.

(c) The use in this Agreement of the word “include” or “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matters, unless such term relates to a period of time.

### **13. Understanding and Authority**

You understand and agree that all terms of this Agreement are contractual and not a mere recital, and represent and warrant that you are competent to covenant and agree as herein provided. You represent and warrant that in negotiating and executing this Agreement, you have had an adequate opportunity to consult with competent legal counsel of your choosing concerning the meaning and effect of each term and provision hereof. You represent that you have carefully read this Agreement in its entirety, fully understand and agree to its terms and provisions, and intend and agree that it be final and binding.

### **14. Applicable Law**

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THIS AGREEMENT AND ITS TERMS WILL BE CONSTRUED IN ACCORDANCE WITH, AND ENFORCED AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK WITHOUT

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REGARD TO CONFLICT OR CHOICE OF LAW RULES OR OTHER PRINCIPLES THAT MIGHT OTHERWISE REFER CONSTRUCTION OR INTERPRETATION OF THIS AGREEMENT TO THE SUBSTANTIVE LAW OF A JURISDICTION OTHER THAN NEW YORK.

**15. Forum Selection, Jury Waiver, Service of Process**

AT ALL TIMES EACH PARTY HERETO: (A) IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY NEW YORK COURT OR FEDERAL COURT SITTING IN NEW YORK; (B) AGREES THAT ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR FEDERAL COURT; (C) TO THE EXTENT PERMITTED BY LAW, IRREVOCABLY WAIVES (I) ANY OBJECTION SUCH PARTY MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT, OR (II) ANY CLAIM THAT SUCH PARTY MAY HAVE THAT ANY SUCH ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM; (D) TO THE EXTENT PERMITTED BY LAW, IRREVOCABLY AGREES THAT A FINAL NONAPPEALABLE JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW; AND (E) IRREVOCABLY WAIVES TRIAL BY JURY AS TO ANY ACTION, MATTER, CLAIM OR ISSUE ARISING BETWEEN THEM RELATING TO THIS AGREEMENT, ITS ENFORCEMENT OR BREACH.

NOTHING IN THIS SECTION 15 SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE LEGAL PROCESS IN ANY MANNER PERMITTED BY LAW. FURTHER, YOU AGREE THAT SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL AT YOUR ADDRESS LAST KNOWN TO THE COMPANY.

**[signature page follows]**



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By your signature below, you acknowledge that you have reviewed this Agreement carefully and understand that the covenants and obligations it contains are binding on you.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the      day of      , 20   .

**EXECUTIVE**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

**PAETEC HOLDING CORP.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

### **Company Confidential Information**

For purposes of this Agreement, the following materials and information, whether having existed, now existing, or to be developed or created during the term of your employment by the Company, constitute “Company Confidential Information” that is subject to this Agreement:

1.1. Products and Services. All information to which the Company gave me access, all information disclosed to me by the Company, and all information developed for the Company by me, alone or with others, that directly or indirectly relates to the business, products and/or services that the Company engages in, plans to engage in or contemplates engaging in, including research, development, manufacture, sale and/or licensing of products and services related to communications, integrated communications, long-distance services, Internet access, eCommerce, hardware and software (whether owned or licensed by the Company), wireless networking and wireless last-mile services, and data services, on a wholesale, resale and/or retail basis, including but not limited to local, domestic, and international long-distance services, local exchange services, IP/ISP services, high-speed Internet access, MPLS services, DSL services, eCommerce, web hosting, ASP services, data networking, systems integration services, internet telephone (VOIP) equipment and services, telecommunications expense management software and managed services, and data communications services and other proprietary products or services, whether existing or in any stage of research and development (such as trade secrets, inventions, ideas, methods, technical and laboratory data, engineering data and information, engineering information related to the integration of communications devices and equipment, benchmark test results, processes, design specifications, algorithms, technical data, technical formulas, engineering data, processes, manufacturing data, procedures, techniques, methodologies, information processing processes, and strategies).

1.2. Business and Marketing Procedures and Customer Information. All information concerning or relating to the way the Company conducts its business, markets its products and services, and all information relating to any Company customers and sales agents or prospective customers and sales agents (such as internal business procedures, business strategies, marketing plans and strategies, controls, plans, licensing techniques and practices, supplier, subcontractor and prime contractor names and contracts and other vendor information, customer information and requirements, sales agent information, computer system passwords and other computer security controls, financial information, distributor information, information supplied by clients and customers of the Company and employee data).

1.3. Not Generally Known. Any information in addition to the foregoing which is not generally known to the public or within the industry or trade areas in which the Company competes, through no fault of mine, which gives the Company any advantage over its competitors.

1.4. Third-Party Information. Any information that is confidential and proprietary to a third party that the Company has and in the future will receive from such third party subject to the Company's duty to maintain the confidentiality of such information and to use it for certain limited purposes.

1.5. All Physical Embodiments of Products, Services, Business, Marketing, Customer and Other Information. All the physical embodiments of all of the information included in Sections 1.1, 1.2, 1.3 and 1.4 of this Annex A-1, including research programs, research data, testing data, software, compositions, compounds, hardware, works of authorship, source code, other computer code, correspondence, check lists, samples, forms, ledgers, financial data, financial statements, financial reports, forecasts and projections, discounts, margins, costs, credit terms, pricing practices, pricing policies and procedures, goals and objectives, quoting practices, quoting procedures and policies, financial and operational analyses and studies, management reports of every kind, databases, employment records pertaining to employees other than yourself, customer data including customer lists, contracts, representatives, requirements and needs, specifications, data provided by or about prospective, existing or past customers and contract terms applicable to such customers, engineering notebooks, notes, drawings, work sheets, schematics, load modules, schematics, annotations, flow charts, logic diagrams, procedural diagrams, coding sheets, requirements, proposals, instructor manuals, course materials, video cassettes, transparencies, slides, presentations, proposals, printouts, studies, contracts, maintenance manuals, operational manuals, documentation, license agreements, marketing practices, marketing policies and procedures, marketing plans and strategies, marketing reports, strategic business plans, marketing analyses, seminar and class attendee rosters, trade show or exhibit attendee listings, listings of customer leads, and any other written or machine-readable expressions of such information as are fixed in any tangible media.

1.6. Trade Secrets. I acknowledge and agree that the Company Confidential Information identified in Sections 1.1, 1.2, 1.3 and 1.5 of this Annex A-1 constitute trade secrets of the Company.

1.7. Excluded Matters. The general skills, knowledge and experience gained during your employment with the Company, and information publicly available or generally known within the industry or trade areas in which the Company competes, are not considered Company Confidential Information.

**Obligations With Respect to Company Confidential Information**

1.1. Non-Disclosure. During and after your employment with the Company, you shall not misuse, misappropriate, disclose or transfer in writing, orally or by electronic means, any Company Confidential Information, directly or indirectly, to any other Person, or use Company Confidential Information in any way, except as is required in the course of your employment with the Company, nor shall you accept any employment or other professional engagement that likely shall result in the use or disclosure, even if inadvertent, of Company Confidential Information. You further agree that Company Confidential Information includes information or material received by the Company from others, including its Affiliates, and is intended by the Company to be kept in confidence by its recipients. You understand that you are not allowed to sell, license or otherwise exploit any products (including hardware or software in any form) which embody or otherwise exploit in whole or in part any Company Confidential Information or materials. You acknowledge and agree that the sale, misappropriation, or unauthorized use or disclosure in writing, orally or by electronic means, at any time of Company Confidential Information obtained by you during the course of your employment constitutes unfair competition. You agree and promise not to engage in any unfair competition with the Company, either during your employment or at any other time thereafter. You further acknowledge and agree that the Company's products and services can be developed and marketed nationwide, and therefore, the protection afforded the Company must likewise be nationwide.

1.2. Preservation, Removal and Return of Information. You agree to take all reasonable steps to preserve the confidential and proprietary nature of Company Confidential Information and to prevent the inadvertent or accidental disclosure of Company Confidential Information. You acknowledge and agree that all Company Confidential Information, whether prepared by you or otherwise coming into your possession while you are employed by the Company, shall remain the exclusive property of the Company. You agree that during your employment with the Company and thereafter, you shall not use, disclose, transfer, or remove from the Company's premises any Company Confidential Information other than as authorized by the Company. You agree to return to the Company all Company Confidential Information and copies thereof, in whatever form, at any time upon the request of the Company, and at the time of your termination of employment for any reason. You agree not to retain any copies of any Company Confidential Information or Company-owned materials after your termination of employment for any reason whatsoever. Your obligations under Section 2 of the Agreement (including this Annex A-2) shall continue after termination of your employment with the Company.

A-2-1

**PRIOR INVENTIONS**

This Exhibit 1 sets forth a complete list of all Inventions that I, alone or jointly with others, have conceived, developed or reduced to practice or caused to be conceived, developed or reduced to practice prior to the commencement of my employment with the Company, that I consider to be my property or the property of third parties and that I wish to have excluded from the scope of the Executive Confidentiality, Non-Solicitation, Non-Competition and Severance Agreement (collectively referred to as "Prior Inventions").

I understand that if disclosure of any such Prior Invention would cause me to violate any prior confidentiality agreement, I am not to list such Prior Inventions in this Exhibit 1 but am only to disclose a cursory name for each such invention, a listing of the party or parties to whom it belongs and the fact that full disclosure as to such inventions has not been made for that reason. A space is provided below for such purpose.

If no such disclosure is attached, I represent that there are no Prior Inventions.

**Description of Prior Inventions And Related Documents (if applicable):**

Title and Description of Invention And Related Document	Date of Invention/ Document	Owners of Invention/Document	Name of Witness(es) to Invention/ Document

If no information is listed herein, I hereby affirm that I do not have any such prior intellectual properties, inventions or other works to identify.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

**EXECUTIVE CONFIDENTIALITY, NON-SOLICITATION,  
NON-COMPETITION AND SEVERANCE AGREEMENT**

THIS EXECUTIVE CONFIDENTIALITY, NON-SOLICITATION, NON-COMPETITION AND SEVERANCE AGREEMENT (together with the annexes and exhibit attached hereto, this “Agreement”) is entered into as of the date set forth on the signature page hereto between PAETEC Holding Corp., a Delaware corporation (“PAETEC Holding”), and (“you”).

WHEREAS, the Company (as defined herein) has developed and expects to continue to develop confidential and proprietary materials and highly sensitive information of significant value, which you recognize must be carefully protected as set forth below for the Company to be successful;

NOW, THEREFORE, to induce the Company to continue to employ you, and in consideration of your continued employment by the Company and for other good and valuable consideration, the receipt and sufficiency of which you hereby acknowledge, PAETEC Holding and you hereby agree, intending to be legally bound, as follows:

**1. Defined Terms**

For purposes of this Agreement, the following capitalized terms have the meanings ascribed to such terms in this Section 1:

“**Affiliate**” shall have the meaning ascribed to such term in Rule 12b-2 promulgated under the Exchange Act.

“**Board**” shall mean the board of directors of PAETEC Holding.

“**Cause**” shall mean termination of your employment with the Company due to any of the following: (a) your material failure or refusal to perform the duties assigned to you, *provided* that the Company gives you a written notice of your failure or refusal to perform such duties and 20 days to remedy such failure or refusal, and *provided, further*, that such duties are not materially inconsistent with those of other individuals who report directly to the officer of the Company to whom you directly report (or materially inconsistent with those of other individuals reporting directly to the Board, if you are the Chief Executive Officer of PAETEC Holding); (b) your refusal to follow the reasonable directives of the Board, the Chief Executive Officer or the other officer to whom you directly report, *provided* that the Company gives you a written notice of your refusal to perform such directives and 20 days to remedy such refusal, and *provided, further*, that such directives are not materially inconsistent with those of other individuals who report directly to the officer of the Company to whom you directly report (or the Board, if you are the Chief Executive Officer of PAETEC Holding); or (c) your conviction of a felony.

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**“Change of Control Transaction”** shall mean any of the following:

- (a) the dissolution or liquidation of PAETEC Holding;
- (b) a merger, consolidation, reorganization or similar transaction involving PAETEC Holding (i) in which PAETEC Holding is not the surviving corporation or other surviving Person or (ii) which results in PAETEC Holding becoming the wholly-owned subsidiary of another corporation or other Person (any transaction of the type specified in this clause (ii), a “Parent Transaction”), unless the Existing Stockholders beneficially own (within the meaning of Rule 13d-3 promulgated under the Exchange Act) in the aggregate immediately following the consummation of such transaction more than 50% of the combined voting power of all classes of outstanding Voting Securities of the successor to PAETEC Holding (in the case of a transaction referred to in clause (i) above) or of the corporation or other Person whose Voting Securities are issued to the Existing Stockholders in such transaction (in the case of a transaction referred to in clause (i) or (ii) above);
- (c) a sale of all or substantially all of the assets of PAETEC Holding to another corporation or other Person, as determined in accordance with the applicable law of the State of Delaware;
- (d) any other transaction (including a merger, consolidation, reorganization or similar transaction) that results in any corporation or other Person, other than the Arunas A. Chesonis and his controlled Affiliates, beneficially owning (within the meaning of Rule 13d-3 promulgated under the Exchange Act) immediately following the consummation of such transaction more than 50% of the combined voting power of all classes of outstanding Voting Securities of (i) the corporation (including, to the extent applicable, PAETEC Holding) or other Person whose Voting Securities are issued to the Existing Stockholders in such transaction or (ii) if no such issuance is made in such transaction, PAETEC Holding; or
- (e) the Incumbent Board Members ceasing for any reason to constitute (i) at any time prior to the consummation of a Parent Transaction, a majority of the Board or a majority of the board of directors, board of managers or other governing body of any successor to PAETEC Holding or (ii) at any time following the consummation of a Parent Transaction, a majority of the board of directors, board of managers or other governing body of the corporation or other Person whose Voting Securities are issued to the Existing Stockholders in such transaction; *provided, however*, that any individual becoming a member of the Board or of such board of directors, board of managers or other governing body, as the case may be, subsequent to the date of this Agreement whose appointment or nomination for election was approved by a vote of at least a majority of the Incumbent Board Members shall be deemed to be an Incumbent Board

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Member for purposes of this clause (e), but excluding, for such purposes, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors (or managers or other members of any such governing body) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board or such board of directors, board of managers or other governing body, as the case may be.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended, as in effect on the date hereof or as hereafter amended.

**“Company”** shall mean (a) collectively, PAETEC Holding and its Subsidiaries, or (b) when express reference in this Agreement is made to your employment with the Company or when reference in this Agreement is made to any notice or other communication you are required or permitted to provide hereunder, PAETEC Holding, if you are employed by PAETEC Holding, or any Subsidiary of PAETEC Holding, if you are employed by such Subsidiary, and shall include the successors and assigns of PAETEC Holding and each Subsidiary.

**“Company’s Business”** shall mean the businesses in which PAETEC Holding and its Subsidiaries engage or plan to engage (even if they have not yet begun to engage in such businesses) at any time during the term of your employment with the Company, which businesses shall include research, development, manufacture, sale, resale and/or licensing of products and services related to communications, integrated communications, long-distance services, Internet access, eCommerce, hardware and software (whether owned or licensed by the Company), wireless networking and wireless last mile services, and data services, on a wholesale, resale and/or retail basis, including local, domestic, and international long-distance services, local exchange services, IP/ISP services, high-speed Internet access, MPLS services, DSL services, eCommerce, web hosting, ASP services, data networking, systems integration services, telecommunications hardware manufacturing and sale, internet telephony (VOIP) equipment and services, telecommunications expense management software and managed services, and data communications services.

**“Disability”** shall mean your “permanent and total disability” within the meaning of Section 22(e)(3) of the Code.

**“Exchange Act”** shall mean the Securities Exchange Act of 1934, as amended, as in effect on the date hereof or as hereafter amended.

**“Existing Stockholders”** shall mean, with respect to any transaction, all holders of all classes of Voting Securities of PAETEC Holding as of the time immediately preceding the consummation of such transaction.

**“Good Reason”** shall mean termination of your employment with the Company due to any of the following: (a) your assignment without your consent to a position, responsibilities, or duties of a materially lesser status or degree of responsibility than your



position, responsibilities, or duties as of the date of this Agreement; (b) any action by the Company to reduce your base salary by a material amount at any time; (c) any action by the Company to reduce your “target” annual bonus opportunity (as opposed to your minimum or maximum annual bonus opportunity), expressed as a percentage of your annual base salary, by a material amount at any time; or (d) a requirement by the Company that you be based anywhere other than within 50 miles of your current location without your consent; *provided, however*, you must give written notice to the Company within 90 days of the occurrence of the condition that is the basis for such Good Reason; *provided, further*, that, if the basis for such Good Reason is correctible and the Company has corrected the basis for such Good Reason within 30 days after receipt of such notice, you may not then terminate your employment for Good Reason with respect to the matters addressed in such notice, and therefore your notice of termination with respect to such basis for Good Reason shall automatically become null and void.

“**Incumbent Board Members**” shall mean the individuals who, as of the date of this Agreement, constitute the Board.

“**Person**” shall mean an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“**Subsidiary**” shall mean any corporation, partnership, limited liability company, association or other business entity of which more than 50% of the voting power of the outstanding Voting Securities is owned, directly or indirectly, by PAETEC Holding and one or more other Subsidiaries of PAETEC Holding.

“**Voting Securities**” shall mean, with respect to any Person, capital stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

## **2. Confidentiality**

(a) You acknowledge that you have been and shall be provided access to the Company Confidential Information and occupy and shall occupy a position of trust and confidence with respect to the Company’s affairs and business. For purposes of this Agreement, “Company Confidential Information” shall have the meaning ascribed to such term on **Annex A-1** attached hereto and made a part hereof.

(b) You acknowledge and agree that: (i) during your employment with the Company, you shall have access to and become acquainted with the Company Confidential Information and materials, including its trade secrets, and shall occupy a position of trust and confidence with respect to the Company’s affairs, business and customer goodwill, and the Company Confidential Information; (ii) the interests afforded protection by this Agreement are the Company’s legitimate business interests, deserving of protection; and (iii) the Company would not have entered into or continued its employment relationship with you without your execution of this Agreement. You agree to take the steps set forth on **Annex A-2** attached hereto and made a part hereof to preserve the confidential and proprietary nature of the Company Confidential Information and materials and to preserve the Company’s goodwill.

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### 3. Non-Competition and Non-Solicitation

(a) Unless the following covenants are waived in whole or in part by the Company in accordance with Section 7, for a period of one (1) year after the effective date of termination of your employment with the Company (the “Termination Date”) (irrespective of the reason for, or manner of, such termination), you shall not, directly or indirectly:

- (i) solicit, recruit or hire, or in any manner assist in the soliciting, recruitment or hiring of (A) any of the employees of PAETEC Holding or any Subsidiary or any individuals who were employed by PAETEC Holding or any Subsidiary within 12 months before the Termination Date, or (B) any of the sales agents or independent sales agents of PAETEC Holding or any Subsidiary, or any individual or Person that was a sales agent or independent sales agent of PAETEC Holding or any Subsidiary within 12 months before the Termination Date;
- (ii) individually or as an officer, director, employee, shareholder or equity owner (other than as a shareholder or other equity owner of less than 1% of the outstanding capital stock of a publicly traded company), consultant, contractor, partner, joint venturer, agent, manager, or other representative, work for, become employed by or perform services for any corporation or other Person that is competitive with the Company’s Business or that would divert business from PAETEC Holding or any Subsidiary in any geographical area in which PAETEC Holding or any Subsidiary is then conducting operations (such competitive corporation or other Person, an “Other Enterprise”), provided that you shall not be restricted from working for, becoming employed by or performing services for any Other Enterprise, even if another division, subsidiary or Affiliate of such Other Enterprise is competitive with the Company’s Business or would divert business from PAETEC Holding or any Subsidiary, so long as you do not perform any services for such division, subsidiary or Affiliate, and provided, further, that you shall not be restricted under this Section 3(b)(ii) from competing with any business of PAETEC Holding or any Subsidiary if you did not provide any services to such business of PAETEC Holding or such Subsidiary or did not possess or have knowledge of Company Confidential Information within the 24-month period before the Termination Date;
- (iii) solicit on behalf of any Other Enterprise, or accept on behalf of any Other Enterprise, business from any individual, business or organization that was known by you to be a customer of PAETEC Holding or any Subsidiary, or identified by PAETEC Holding or any

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Subsidiary as a prospective customer of PAETEC Holding or such Subsidiary, in each case as of or within 12 months before the Termination Date; or

- (iv) take any action to influence or attempt to influence customers, prospective customers, vendors or suppliers of PAETEC Holding or any Subsidiary known to you to divert their business to any Other Enterprise or take any action which is intended, or would reasonably be expected, to affect adversely PAETEC Holding or any Subsidiary, the Company's Business, the reputation of PAETEC Holding or any Subsidiary, or the relationship of PAETEC Holding or any Subsidiary with its customers, prospective customers, vendors or suppliers.

(b) The parties agree that if a court of competent jurisdiction finds that any term of this Section 3 is for any reason unenforceable because it is overly broad in scope or duration, such term shall be modified to the minimum extent necessary to make it enforceable. Further, the covenants in this Section 3 shall be deemed to be a series of separate covenants and agreements, one for each and every region of each state, territory, possession or other political division of the United States of America and each other political division worldwide. If, in any judicial proceeding, a court of competent jurisdiction shall refuse to enforce any of the separate covenants deemed included herein, then, at the option of the Company, wholly unenforceable covenants shall be deemed eliminated from this Section 3 for the purpose of such proceeding to the extent necessary to permit the remaining separate covenants to be enforced in such proceeding. In addition, if a court or other enforcement body finds that any provision of this Section 3 may not be enforced as written because of a public policy, you agree that such court or enforcement body shall modify and construe such provision to permit its enforcement to the maximum extent permitted by law.

(c) You acknowledge the highly competitive nature of the industry in which the Company is involved and further as follows: (i) your services to the Company are special and unique; (ii) your work for the Company shall allow you access to Company Confidential Information, including trade secrets, and customers; (iii) the Company's business is conducted throughout the United States and over the Internet and World Wide Web, enabling the Company and you to regularly provide services to customers nationwide; (iv) PAETEC Holding would not have entered into this Agreement but for the covenants and agreements contained in this Section 3; and (v) the agreements and covenants contained in this Section 3 are reasonable and are necessary and essential to protect the business, Company Confidential Information, including trade secrets, and goodwill of the Company. You further acknowledge that this Agreement does not restrict your ability to be gainfully employed, and you acknowledge that the geographic boundaries, scope of prohibited activities, and duration of the covenants set forth in this Section 3 are reasonable in nature and no broader than are necessary to protect the legitimate business interests of the Company. You agree not to raise any objection to the reasonableness of this Section 3 in any action or proceeding to enforce the terms of this Agreement.

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#### 4. Certain IP and Inventions

(a) During your employment with the Company, you agree that you shall not knowingly improperly use or disclose any proprietary information or trade secrets of any former employer or other Person intended by such employer or other Person not to be disclosed to the Company. You further agree that you shall not bring onto the Company's premises any unpublished document or proprietary information belonging to any former employer or other Person unless consented to in writing by such employer or other Person. You agree to inform the Company of any conflicts between your work for the Company and any obligations you may have to preserve the confidentiality of another Person's proprietary information or materials. If you do not so inform the Company, the Company may conclude that no such conflicts exist, and you agree that thereafter you shall make no claim against the Company that any such conflicts exist. The Company shall receive any such disclosures about any such conflicts in confidence and consistent with the objectives of avoiding any conflict of obligations and rights or the appearance of any conflict of interest.

(b) Inventions directly relating and applicable and useful to the Company's Business, if any, patented or unpatented, which you made prior to the commencement of your employment with the Company are excluded from the scope of this Agreement. To preclude any possible uncertainty, you have set forth on **Exhibit 1** attached hereto a complete list of all such Inventions that you have, alone or jointly with others, conceived, developed or reduced to practice or caused to be conceived, developed or reduced to practice prior to the commencement of your employment with the Company, that you consider to be your property or the property of third parties and that you wish to have excluded from the scope of this Agreement (collectively referred to as "Prior Inventions"). If disclosure of any such Prior Invention would cause you to violate any prior confidentiality agreement, you understand that you are not to list such Prior Inventions in **Exhibit 1** attached hereto but are only to disclose a cursory name for each such invention, a listing of the party or parties to whom it belongs and the fact that full disclosure as to such inventions has not been made for that reason. A space is provided on **Exhibit 1** attached hereto for such purpose. If no such disclosure is attached, you represent that there are no such Prior Inventions. If, in the course of your employment with the Company, you incorporate a Prior Invention into a Company product, test, service or process, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to make, have made, modify, use and sell such Prior Invention. Notwithstanding the foregoing, you agree that you shall not incorporate, or permit to be incorporated, Prior Inventions in any Company Inventions without the Company's prior written consent.

(c) You represent that, to the best of your knowledge, your performance of all of the terms of this Agreement and as an employee of the Company does not and shall not breach any agreement to keep in confidence proprietary information acquired by you prior to your employment by the Company. Further, you represent that, to the best of your knowledge, the performance of your duties with the Company shall not breach any contractual or other legal obligation you have to any third Person.

(d) You agree that any and all intellectual properties, including all ideas, concepts, themes, inventions, designs, tests, procedures, research methods, improvements, discoveries, developments, formulas, patterns, devices, processes, software programs, hardware information, engineering and other information related to the integration of hardware and software, software program codes, logic diagrams, flow charts, decision charts, drawings, procedural diagrams, coding sheets, documentation manuals, technical data, client, customer and supplier lists, and compilations of information, records, and specifications, and other matters constituting Company Confidential Information (including trade secrets), that relate in any way to the actual or prospective business of the Company or to any experimental or developmental work carried on by the Company, and that are conceived, developed or written by you, individually or in collaboration with others during your employment, and all designs, plans, reports, specifications, drawings, inventions, processes, test data and/or other information or items produced by you while performing your duties for the Company, shall belong to and be the sole and exclusive property of the Company, and are “works for hire” by you in your capacity as an employee of the Company. To the extent any such tangible or intangible work product of yours is not a “work for hire,” you hereby assign and transfer to the Company, to the fullest extent permitted by law, all of your rights, title and interest in such intellectual properties, including all patent, copyright or trade secret rights therein.

(e) You further agree to assist the Company in obtaining patents on all inventions, designs, improvements and discoveries that are patentable, or copyright registrations on all works of authorship, and to execute all documents and do all things necessary to vest the Company with full and exclusive title and protect against infringement by others. You agree to give the Company or its designees all assistance reasonably requested to perfect such rights, *provided* that following termination of your employment, the Company shall reimburse you for your reasonable time and expense in assisting with such matters. You further agree that if the Company is unable, after reasonable effort, to secure your signature on any such documents, any officer of the Company shall be entitled to execute any such documents as your agent and attorney-in-fact, and you hereby irrevocably designate and appoint each officer of PAETEC Holding and each Subsidiary as your agent and attorney-in-fact to execute any such documents on your behalf, and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any work, under the conditions described in this sentence. You agree that you shall promptly and fully inform the Company of and disclose to the Company all intellectual properties described in this Agreement that you make during your employment with the Company, whether individually or jointly in collaboration with others, that pertain or relate to the actual or potential business of the Company or to any experimental or developmental work carried on by the Company, whether or not conceived during regular working hours. You agree to make full disclosure to the Company immediately after creating or making any of the intellectual properties identified in this Agreement, and shall thereafter keep the Company fully informed at all times of all progress in connection therewith. You also agree that you shall promptly disclose to the Company all patent applications filed by you or on your behalf within 12 months after the Termination Date that relate to or concern the Company’s Business.

(f) You understand that the term “moral rights” shall mean any rights of attribution or integrity, including any right to claim authorship of a copyrightable work, to object to a modification of such copyrightable work, and any similar right existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or generally referred to as a “moral right.” You forever hereby waive and agree never to assert any moral rights you may have in any copyrightable work that is a “work for hire” or is assigned to the Company as a result of this Agreement, even after any termination of your employment with the Company.

## 5. Consideration

As consideration for the covenants set forth in Section 3, and subject to your execution and non-revocation of a Release (as defined in Section 6(b)) within the time limits set forth in this Agreement, the Company agrees as follows:

- (a) In connection with the termination of your employment with the Company (irrespective of the reason for, or manner of, such termination), unless your employment is terminated due to your death or Disability, the Company, subject to the Company’s waiver right set forth in Section 7, shall:
- (i) pay you in the form of salary continuation, in equal installments in accordance with Section 6, during the one-year period in which the covenants set forth in Section 3 are in effect, an amount equal to the highest annualized base salary paid to you at any time during the one-year period immediately preceding the termination of your employment (hereafter referred to as your “Base Salary”), *provided that*, if your employment is terminated by the Company without Cause or by you for Good Reason within one year following the consummation of a Change of Control Transaction, then the Company shall pay you during the one-year period in which the covenants set forth in Section 3 are in effect, an amount equal 1.5 times your Base Salary;
  - (ii) subject to the Company’s ability to do the same in accordance with the terms of the applicable program documents and applicable law, as determined by the Company in good faith, continue your eligibility and participation in the following benefit programs:
    - (A) if you choose to enroll in continued medical and/or dental plan coverage for which you are eligible pursuant to the Consolidated Omnibus Budget Reconciliation Act (“COBRA”) and you actually enroll within the applicable statutory period, the Company shall pay a portion of the premiums for such coverage in an amount equal to the amount of the premiums it paid on your behalf for coverage in such plans immediately prior to your termination of employment (which payments shall be includible

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in your taxable income) until the earliest to occur of (x) the date of termination of the one-year period during which the covenants set forth in Section 3 are in effect, (y) the date on which COBRA benefits cease to be available to you under applicable law or (z) the date on which you enroll in another medical plan (and if the payments the Company makes on your behalf under this provision cease prior to the date on which any entitlement you may have to continuation of health insurance coverage ceases under applicable law, you may continue to participate in such coverage thereafter at your expense to the extent provided under any applicable law); and

- (B) during the entire one-year period in which the covenants set forth in Section 3 are in effect, the Company shall pay the premiums (on a semi-annual basis) for the Company-provided life insurance you elect to “port” following your termination of employment (and you shall be able to continue any supplemental life insurance coverage at your own expense following separation from the Company).

(b) If your employment with the Company is terminated by you for Good Reason or by the Company without Cause, the Company shall pay you on account of the annual bonus period ending during the one-year period in which the covenants set forth in Section 3 are in effect, in accordance with Section 6, an annual bonus amount equal to the lesser of (i) the “target” amount that you would have been eligible to receive under the Company’s annual bonus plan for corporate non-commissioned employees (the “Annual Bonus Plan”) in effect on the Termination Date, as if such annual bonus year had been completed and your particular bonus targets had been fully achieved at the “target” level (as opposed to the maximum level), or (ii) if the amount achieved is less than the “target” level, the amount that is achieved, or to the extent that no bonus is achieved, no amount shall be paid; *provided* that, if your employment is terminated by the Company without Cause or by you for Good Reason within one year following the consummation of a Change of Control Transaction, then the foregoing subsection (ii) provisions shall not apply and the “target” level bonus shall be paid. For purposes of applying this subsection, the bonus payment shall be applied as if you had been an employee of the Company during the entire applicable bonus year (i.e., the payment shall not be pro-rated in any manner) and any requirements of the Annual Bonus Plan that you be employed by the Company during all of the calendar year covered by the Annual Bonus Plan and/or be on the payroll as of the date on which the bonus payments are actually paid out shall not apply for the purposes of the entitlement under this Section 5.

(c) PAETEC Holding shall provide in each agreement evidencing awards of stock options, stock appreciation rights, restricted stock, stock units or other equity-based awards granted to you on or after the date of this Agreement (collectively, the “Applicable Awards”) that:

- (i) if your employment with the Company is terminated by you for Good Reason or by the Company without Cause, the Applicable Awards shall continue to vest over the entire one-year period in which the

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covenants set forth in Section 3 are in effect as if your employment with the Company had continued over such period (with the last day on which the covenants set forth in Section 3 are in effect being deemed to be your last day of employment with the Company for purposes of determining the expiration date of your Applicable Awards); and

- (ii) (A) immediately prior to the consummation of a Change of Control Transaction, all restricted stock, stock units and similar awards that are Applicable Awards held by you shall vest and the shares of stock subject thereto shall be delivered to you, and (B) 15 days prior to the scheduled consummation of a Change of Control Transaction, all stock options, stock appreciation rights and similar awards that are Applicable Awards shall become immediately exercisable and shall remain exercisable until such consummation.

(d) Notwithstanding anything in this Agreement to the contrary, the following benefits shall cease as of the Termination Date: (i) your contributions and contributions on your behalf to the Company-sponsored Code Section 401(k) plan, and any other retirement plan maintained by the Company; (ii) your coverage under the Company's short-term and long-term disability policies; and (iii) your coverage under all other benefit programs.

(e) Nothing in this Section 5 or otherwise in this Agreement shall be construed to impose an obligation on the Company to continue your employment or retain you in any capacity after the Termination Date.

## **6. Payment Procedures; Forfeiture of Payments**

(a) Payment equal to the amount of your Base Salary pursuant to Section 5 shall be made in installments in accordance with the Company's customary payroll practices, with the first such installment commencing on the first payroll date immediately following the sixtieth day after the Termination Date (unless otherwise required by Section 6(e)), except that the Company shall have no obligation to accommodate your request for direct deposit or voluntary deductions for any purpose. In those years, if any, in which you are entitled to receive a multiple of your annualized Base Salary, each regular payroll payment that is due to you shall be based upon such multiple, so that all regular payroll payments in such year are as nearly equal in amount as reasonably practicable.

(b) Payment of amounts equal to the annual bonus amounts pursuant to Section 5 shall be made in accordance with the Company's customary annual bonus payout practices (including, to the extent applicable, "progress" or similar payments for



the annual bonus period ending during the period in which the covenants set forth in Section 3 are in effect). The first installment of such payments shall be made on the first regular payroll date of the Company immediately following the sixtieth day after the Termination Date (unless otherwise required by Section 6(e)). Without limiting the foregoing, payment of such amounts shall be made to you at the same time and in the same manner as the annual bonus is paid out to the Company's employees generally, and, in any event, payments other than "progress" payments shall be made in the calendar year immediately following the calendar year in which the applicable bonus year occurs, except that in any year in which there is no bonus payout to employees generally, the annual bonus amount due to you shall be paid to you in full on the later of February 1 of the calendar year immediately following the calendar year in which the applicable bonus year occurs and the sixtieth day after the Termination Date (unless otherwise required by Section 6(e)).

(c) If the Company determines in good faith that you have violated the terms of any of the covenants set forth in this Agreement, the Company, in addition to any other remedies available under law, may discontinue any payments being made to you, and may discontinue any other benefits to which you otherwise are entitled, pursuant to Section 5.

(d) If as a result of any legal challenge by you:

- (i) a court of competent jurisdiction determines the provisions of Section 3 to be void or unenforceable in whole or in part, the Company, in its absolute discretion, may terminate the payments and benefits set forth in Section 5 as of the effective date of the court judgment; or
- (ii) a court of competent jurisdiction determines that your obligations under Section 3 are valid and enforceable for a period shorter than the entire period provided for in Section 3, the Company's obligations under Section 5 shall continue only for the period for which it is determined by such court that such covenants may be enforced (with any amounts payable by the Company, and any continued vesting, being reduced on a proportionate basis).

(e) Anything in this Agreement to the contrary notwithstanding, if (i) on the Termination Date, any capital stock of PAETEC Holding or any successor thereto is publicly traded on an established securities market or otherwise (within the meaning of Section 409A(a)(2)(B)(i) of the Code), (ii) you are determined to be a "specified employee" within the meaning of Section 409A(a)(2)(B) of the Code, (iii) the payments exceed the amounts permitted to be paid pursuant to Treasury Regulations section 1.409A-1(b)(9)(iii) and (iv) such delay is required to avoid the imposition of the tax set forth in Section 409A(a)(1) of the Code, as a result of the termination of your employment, you would receive any payment that, absent the application of this Section 6(e), would be subject to interest and additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(2)(B)(i) of the Code, then no

such payment shall be payable prior to the date that is the earliest of (A) six months after the Termination Date, (B) the date of your death or (C) such other date as shall cause such payment not to be subject to such interest and additional tax (with a catch-up payment equal to the sum of all amounts that have been delayed to be made as of the date of the initial payment).

With respect to payments under this Agreement, for purposes of Section 409A of the Code, each severance payment and COBRA continuation reimbursement payment shall be considered one of a series of separate payments. Any amount for which you are entitled to be reimbursed by the Company shall be reimbursed to you as promptly as reasonably practicable and in any event not later than the last day of the calendar year in which the reimbursable expenses are incurred, and the amount of such expenses eligible for reimbursement during any calendar year shall not affect the amount of expenses eligible for reimbursement in any other calendar year. It is the intention of the parties that payments or benefits payable under this Agreement not be subject to the additional tax imposed pursuant to Section 409A of the Code. To the extent such potential payments or benefits could become subject to Section 409A of the Code, the parties shall cooperate to amend this Agreement with the goal of giving you the economic benefits provided for herein in a manner that does not result in such tax being imposed.

(f) A termination of employment under this Agreement shall be deemed to occur only in circumstances that would constitute a termination of employment for purposes of Treasury Regulations section 1.409A-1(h)(1)(ii).

(g) Notwithstanding anything in this Agreement to the contrary, as a condition to the Company's obligation to pay any form of severance or other amount to you or on your behalf upon or following the termination of your employment with the Company, you shall at the time of such termination, execute and deliver to the Company (and shall fail to revoke within such time period as may be established by law (the last day of such time period, the "Effective Date")) a full and unconditional release in favor of the Company and its Affiliates of all obligations other than those set forth in this Agreement. The Company shall use best efforts to provide such release to you within 5 business days of your termination of employment. The release shall be in substantially the form of Annex A-3 attached hereto. If your execution of such release and the Effective Date do not occur within sixty days of the Termination Date, you shall forfeit all right to payments under this Agreement.

## **7. Waiver**

The Company may waive your compliance in whole or in part with one or all of the covenants set forth in Section 3 at its sole discretion if your employment is terminated for Cause. Such a waiver must be made in writing duly executed by PAETEC Holding or any Subsidiary that employs you and shall not in any way be deemed a waiver of the Company's right to enforce any other requirements or provisions of this Agreement. You acknowledge that, if the Company so waives the covenants set forth in Section 3 in whole following the termination of your employment for Cause, the Company shall not be obligated to pay you any of the consideration (including non-cash benefits) set forth in Section 5, notwithstanding any provision of this Agreement to the contrary.

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## **8. “At Will” Nature of Relationship**

Nothing in this Agreement shall be construed as constituting an agreement, understanding or commitment of any kind that the Company shall continue to employ you for any period of time. You hereby acknowledge and agree that your employment with the Company is and shall be “at will,” terminable by you or by the Company at any time with or without cause and with or without notice.

## **9. Enforcement**

You acknowledge and agree that the restrictions contained in this Agreement are reasonable and necessary to protect the business, Company Confidential Information (including trade secrets), goodwill and other interests of the Company and that any violation of these restrictions would cause the Company substantial irreparable injury. Accordingly, you agree that a remedy at law for any breach of the covenants or other obligations in this Agreement would be inadequate and that the Company, in addition to any other remedies available, shall be entitled to obtain preliminary and permanent injunctive relief to secure specific performance of such covenants and to prevent a breach or threatened breach of this Agreement without the necessity of proving actual damage and without the necessity of posting bond or security, which you expressly waive. You shall provide the Company a full accounting of all proceeds and profits received by you as a result of or in connection with a breach of this Agreement. Unless prohibited by law, the Company shall have the right to retain any amounts otherwise payable by the Company to you to satisfy any of your obligations as a result of any breach of this Agreement. You hereby agree to indemnify and hold harmless the Company from and against any damages incurred by the Company as assessed by a court of competent jurisdiction as a result of any breach of this Agreement by you. You agree that each of your obligations specified in this Agreement is a separate and independent covenant that shall survive termination of your employment for any reason and that the unenforceability of any covenant in this Agreement shall not preclude the enforcement of any other covenants in this Agreement.

## **10. Notification of New Employer**

In the event that you leave the employ of the Company, voluntarily or involuntarily, you agree to inform any subsequent employer of your rights and obligations under this Agreement. You further hereby authorize the Company to notify any future employer of your rights and obligations under this Agreement. The foregoing consent is limited to the delivery by the Company to any future employer a signed copy of this Agreement, and any written modifications thereto, and not to any characterization thereof by the Company.

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## 11. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of both parties and their respective successors and assigns, including any corporation or other Person with which or into which PAETEC Holding or any Subsidiary may be merged or which may succeed to the assets or business of PAETEC Holding or such Subsidiary, including in a Change of Control Transaction, *provided, however*, that your obligations as an employee of the Company, are personal and shall not be assigned by you. Without limiting the generality of the foregoing, PAETEC Holding shall have the right, in its discretion, to assign this Agreement to any Subsidiary for purposes of the enforcement of this Agreement.

## 12. General Terms

(a) Except as set forth in Section 12(b), this is your entire agreement with the Company with respect to its subject matter, superseding any prior oral or written, express or implied negotiations and agreements. This Agreement may not be changed in any respect except by a written agreement signed by both you and the Company. If any provision of the Agreement is held to be invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, except to the extent expressly provided in Section 6(d) or otherwise required by applicable law. The delay or omission by the Company or you in exercising its/your rights under this Agreement, or the failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party, shall not be deemed a waiver of any terms, covenants or conditions of this Agreement, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all times or any other time. The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. It is the express intention and agreement of the parties hereto that all covenants, agreements and statements made by any party in this Agreement shall survive the execution and delivery of this Agreement. In addition, the covenants, agreements and statements made in this Agreement shall survive termination of your employment with the Company for any reason.

(b) (i) Except as expressly provided in Section 12(b)(ii), any Senior Officer Confidentiality, Non-Solicitation, Non-Competition and Severance Agreement or Senior Vice President Confidentiality, Non-Solicitation and Non-Competition Agreement or similar agreement to which you are a party immediately prior to the effectiveness of this Agreement (collectively, the "Prior Agreement") hereby automatically and without any further action by any party thereto terminates and is of no further force or effect.

(ii) Notwithstanding any other provision of this Agreement, it is the intention of the parties to preserve the vesting of the stock options and restricted stock units that were awarded to you prior to February 22, 2008 (the "Subject Awards") on the same terms and conditions that governed such vesting immediately prior to the execution and delivery of the Prior Agreement dated February 22, 2008 and this Agreement, *provided*

that the continued vesting of the Subject Awards following the termination of your employment shall be subject to your compliance with the covenants set forth in Section 3(a) of this Agreement rather than your compliance with any corresponding covenants in any Prior Agreement and any other agreements relating to the Subject Awards (such other agreements together with any Prior Agreement, the "Subject Award Agreements"). Consistent with the foregoing, the provisions of the Subject Award Agreements that provide for continued vesting of the Subject Awards following the termination of your employment upon specified circumstances (A) shall continue in full force and effect solely to the extent required to effectuate the intention of the parties to this Agreement as specified in the preceding sentence of this Section 12(b)(ii) and (B) shall be deemed to be amended by this Agreement so that any references therein to a non-competition covenant to which continued vesting of the Subject Awards is subject shall be deemed to be a reference to the covenants set forth in Section 3(a) of this Agreement.

(c) The use in this Agreement of the word "include" or "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matters, unless such term relates to a period of time.

### **13. Understanding and Authority**

You understand and agree that all terms of this Agreement are contractual and not a mere recital, and represent and warrant that you are competent to covenant and agree as herein provided. You represent and warrant that in negotiating and executing this Agreement, you have had an adequate opportunity to consult with competent legal counsel of your choosing concerning the meaning and effect of each term and provision hereof. You represent that you have carefully read this Agreement in its entirety, fully understand and agree to its terms and provisions, and intend and agree that it be final and binding.

### **14. Applicable Law**

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THIS AGREEMENT AND ITS TERMS WILL BE CONSTRUED IN ACCORDANCE WITH, AND ENFORCED AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OR CHOICE OF LAW RULES OR OTHER PRINCIPLES THAT MIGHT OTHERWISE REFER CONSTRUCTION OR INTERPRETATION OF THIS AGREEMENT TO THE SUBSTANTIVE LAW OF A JURISDICTION OTHER THAN NEW YORK.

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**15. Forum Selection, Jury Waiver, Service of Process**

AT ALL TIMES EACH PARTY HERETO: (A) IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY NEW YORK COURT OR FEDERAL COURT SITTING IN NEW YORK; (B) AGREES THAT ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR FEDERAL COURT; (C) TO THE EXTENT PERMITTED BY LAW, IRREVOCABLY WAIVES (I) ANY OBJECTION SUCH PARTY MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT, OR (II) ANY CLAIM THAT SUCH PARTY MAY HAVE THAT ANY SUCH ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM; (D) TO THE EXTENT PERMITTED BY LAW, IRREVOCABLY AGREES THAT A FINAL NONAPPEALABLE JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW; AND (E) IRREVOCABLY WAIVES TRIAL BY JURY AS TO ANY ACTION, MATTER, CLAIM OR ISSUE ARISING BETWEEN THEM RELATING TO THIS AGREEMENT, ITS ENFORCEMENT OR BREACH.

NOTHING IN THIS SECTION 15 SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE LEGAL PROCESS IN ANY MANNER PERMITTED BY LAW. FURTHER, YOU AGREE THAT SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL AT YOUR ADDRESS LAST KNOWN TO THE COMPANY.

**[signature page follows]**

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By your signature below, you acknowledge that you have reviewed this Agreement carefully and understand that the covenants and obligations it contains are binding on you.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the      day of      , 20      .

**EXECUTIVE**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

**PAETEC HOLDING CORP.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

### **Company Confidential Information**

For purposes of this Agreement, the following materials and information, whether having existed, now existing, or to be developed or created during the term of your employment by the Company, constitute “Company Confidential Information” that is subject to this Agreement:

1.1. Products and Services. All information to which the Company gave me access, all information disclosed to me by the Company, and all information developed for the Company by me, alone or with others, that directly or indirectly relates to the business, products and/or services that the Company engages in, plans to engage in or contemplates engaging in, including research, development, manufacture, sale and/or licensing of products and services related to communications, integrated communications, long-distance services, Internet access, eCommerce, hardware and software (whether owned or licensed by the Company), wireless networking and wireless last-mile services, and data services, on a wholesale, resale and/or retail basis, including but not limited to local, domestic, and international long-distance services, local exchange services, IP/ISP services, high-speed Internet access, MPLS services, DSL services, eCommerce, web hosting, ASP services, data networking, systems integration services, internet telephone (VOIP) equipment and services, telecommunications expense management software and managed services, and data communications services and other proprietary products or services, whether existing or in any stage of research and development (such as trade secrets, inventions, ideas, methods, technical and laboratory data, engineering data and information, engineering information related to the integration of communications devices and equipment, benchmark test results, processes, design specifications, algorithms, technical data, technical formulas, engineering data, processes, manufacturing data, procedures, techniques, methodologies, information processing processes, and strategies).

1.2. Business and Marketing Procedures and Customer Information. All information concerning or relating to the way the Company conducts its business, markets its products and services, and all information relating to any Company customers and sales agents or prospective customers and sales agents (such as internal business procedures, business strategies, marketing plans and strategies, controls, plans, licensing techniques and practices, supplier, subcontractor and prime contractor names and contracts and other vendor information, customer information and requirements, sales agent information, computer system passwords and other computer security controls, financial information, distributor information, information supplied by clients and customers of the Company and employee data).

1.3. Not Generally Known. Any information in addition to the foregoing which is not generally known to the public or within the industry or trade areas in which the Company competes, through no fault of mine, which gives the Company any advantage over its competitors.

1.4. Third-Party Information. Any information that is confidential and proprietary to a third party that the Company has and in the future will receive from such third party subject to the Company’s duty to maintain the confidentiality of such information and to use it for certain limited purposes.



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1.5. All Physical Embodiments of Products, Services, Business, Marketing, Customer and Other Information. All the physical embodiments of all of the information included in Sections 1.1, 1.2, 1.3 and 1.4 of this Annex A-1, including research programs, research data, testing data, software, compositions, compounds, hardware, works of authorship, source code, other computer code, correspondence, check lists, samples, forms, ledgers, financial data, financial statements, financial reports, forecasts and projections, discounts, margins, costs, credit terms, pricing practices, pricing policies and procedures, goals and objectives, quoting practices, quoting procedures and policies, financial and operational analyses and studies, management reports of every kind, databases, employment records pertaining to employees other than yourself, customer data including customer lists, contracts, representatives, requirements and needs, specifications, data provided by or about prospective, existing or past customers and contract terms applicable to such customers, engineering notebooks, notes, drawings, work sheets, schematics, load modules, schematics, annotations, flow charts, logic diagrams, procedural diagrams, coding sheets, requirements, proposals, instructor manuals, course materials, video cassettes, transparencies, slides, presentations, proposals, printouts, studies, contracts, maintenance manuals, operational manuals, documentation, license agreements, marketing practices, marketing policies and procedures, marketing plans and strategies, marketing reports, strategic business plans, marketing analyses, seminar and class attendee rosters, trade show or exhibit attendee listings, listings of customer leads, and any other written or machine-readable expressions of such information as are fixed in any tangible media.

1.6. Trade Secrets. I acknowledge and agree that the Company Confidential Information identified in Sections 1.1, 1.2, 1.3 and 1.5 of this Annex A-1 constitute trade secrets of the Company.

1.7. Excluded Matters. The general skills, knowledge and experience gained during your employment with the Company, and information publicly available or generally known within the industry or trade areas in which the Company competes, are not considered Company Confidential Information.

A-1-2

**Obligations With Respect to Company Confidential Information**

1.1. Non-Disclosure. During and after your employment with the Company, you shall not misuse, misappropriate, disclose or transfer in writing, orally or by electronic means, any Company Confidential Information, directly or indirectly, to any other Person, or use Company Confidential Information in any way, except as is required in the course of your employment with the Company, nor shall you accept any employment or other professional engagement that likely shall result in the use or disclosure, even if inadvertent, of Company Confidential Information. You further agree that Company Confidential Information includes information or material received by the Company from others, including its Affiliates, and is intended by the Company to be kept in confidence by its recipients. You understand that you are not allowed to sell, license or otherwise exploit any products (including hardware or software in any form) which embody or otherwise exploit in whole or in part any Company Confidential Information or materials. You acknowledge and agree that the sale, misappropriation, or unauthorized use or disclosure in writing, orally or by electronic means, at any time of Company Confidential Information obtained by you during the course of your employment constitutes unfair competition. You agree and promise not to engage in any unfair competition with the Company, either during your employment or at any other time thereafter. You further acknowledge and agree that the Company's products and services can be developed and marketed nationwide, and therefore, the protection afforded the Company must likewise be nationwide.

1.2. Preservation, Removal and Return of Information. You agree to take all reasonable steps to preserve the confidential and proprietary nature of Company Confidential Information and to prevent the inadvertent or accidental disclosure of Company Confidential Information. You acknowledge and agree that all Company Confidential Information, whether prepared by you or otherwise coming into your possession while you are employed by the Company, shall remain the exclusive property of the Company. You agree that during your employment with the Company and thereafter, you shall not use, disclose, transfer, or remove from the Company's premises any Company Confidential Information other than as authorized by the Company. You agree to return to the Company all Company Confidential Information and copies thereof, in whatever form, at any time upon the request of the Company, and at the time of your termination of employment for any reason. You agree not to retain any copies of any Company Confidential Information or Company-owned materials after your termination of employment for any reason whatsoever. Your obligations under Section 2 of the Agreement (including this Annex A-2) shall continue after termination of your employment with the Company.

A-2-1

**PRIOR INVENTIONS**

This Exhibit 1 sets forth a complete list of all Inventions that I, alone or jointly with others, have conceived, developed or reduced to practice or caused to be conceived, developed or reduced to practice prior to the commencement of my employment with the Company, that I consider to be my property or the property of third parties and that I wish to have excluded from the scope of the Executive Confidentiality, Non-Solicitation, Non-Competition and Severance Agreement (collectively referred to as "Prior Inventions").

I understand that if disclosure of any such Prior Invention would cause me to violate any prior confidentiality agreement, I am not to list such Prior Inventions in this Exhibit 1 but am only to disclose a cursory name for each such invention, a listing of the party or parties to whom it belongs and the fact that full disclosure as to such inventions has not been made for that reason. A space is provided below for such purpose.

If no such disclosure is attached, I represent that there are no Prior Inventions.

**Description of Prior Inventions And Related Documents (if applicable):**

Title and Description of Invention And Related Document	Date of Invention/ Document	Owners of Invention/Document	Name of Witness(es) to Invention/ Document

If no information is listed herein, I hereby affirm that I do not have any such prior intellectual properties, inventions or other works to identify.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

# CERTIFICATION

I, Arunas A. Chesonis, certify that:

1. I have reviewed this quarterly report on Form 10-Q of PAETEC Holding Corp.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 7, 2010

/s/ Arunas A. Chesonis

Arunas A. Chesonis  
Chairman of the Board, President and  
Chief Executive Officer

# CERTIFICATION

I, Keith M. Wilson, certify that:

1. I have reviewed this quarterly report on Form 10-Q of PAETEC Holding Corp.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 7, 2010

/s/ Keith M. Wilson

Keith M. Wilson

Executive Vice President and Chief Financial Officer

**Written Statement of Chief Executive Officer and Chief Financial Officer  
Pursuant to Rule 13a-14(b) or Rule 15d-14(b) under the  
Securities Exchange Act of 1934 and 18 U.S.C. 1350**

Each of the undersigned, the Chief Executive Officer and the Chief Financial Officer of PAETEC Holding Corp., hereby certifies that, on the date hereof:

1. the quarterly report on Form 10-Q of PAETEC Holding Corp. for the quarterly period ended March 31, 2010 filed on the date hereof with the Securities and Exchange Commission (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of PAETEC Holding Corp.

Date: May 7, 2010

/s/ Arunas A. Chesonis

Arunas A. Chesonis  
Chairman of the Board, President and  
Chief Executive Officer

Date: May 7, 2010

/s/ Keith M. Wilson

Keith M. Wilson  
Executive Vice President and Chief Financial Officer

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